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WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 704, 709, and 741

RIN 3133–AD86

Alternatives to the Use of Credit Ratings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to implement certain statutory requirements in Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) pertaining to the use of credit ratings to assess creditworthiness. The final rule removes references to credit ratings in NCUA regulations or replaces them with other appropriate standards of creditworthiness as required by the Dodd-Frank Act.

DATES: This rule is effective June 11, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Vaughan, Director, Division of Analytics and Surveillance, or Dale Klein, Senior Capital Markets Specialist, Office of Examination and Insurance, at (703) 518–6360; or Frank Kressman, Associate General Counsel, or Lisa Henderson, Staff Attorney, at (703) 518–6540. All may be reached at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

Why is NCUA adopting this rule?

Section 939A of the Dodd-Frank Act requires all federal agencies, including NCUA, to review their regulations for any use of credit ratings to assess the creditworthiness of a security or money market instrument, remove those references, and substitute in those regulations other standards of creditworthiness that they determine to be appropriate.[1] On February 17, 2011, the NCUA Board issued a Notice of Proposed Rulemaking (NPRM) to implement section 939A.[2]

How did the NCUA Board propose to replace the ratings in the NPRM?

The NPRM identified references made to nationally recognized statistical rating organization (NRSRO)[3] credit ratings in parts 703, 704, 709, and 742 of NCUA regulations.[4] The NPRM generally treated NRSRO credit rating references three different ways, as discussed below, depending on how the rating was used in the regulations. The preamble to the NPRM also acknowledged that there were many possible standards of creditworthiness that could be used and sought suggestions for alternative standards.

For regulations pertaining to investment securities, the NPRM replaced minimum rating requirements with a requirement that the federal credit union (FCU) or corporate credit union (corporate) conduct and document a credit analysis demonstrating that the issuer of the security has a certain, specified capacity to meet its financial commitments. These replacement standards were based on narrative descriptions provided by the NRSROs for certain letter ratings. For example, where NCUA regulations currently require an investment to have a AA rating, the proposal required the credit union to determine that the issuer of the security had a *very strong* capacity to meet its financial commitments. The NPRM preamble noted that a credit union could use internal and external assessments when evaluating the financial strength of an issuer. The preamble also noted that NCUA would provide additional supervisory guidance on assessing creditworthiness. For regulations pertaining to counterparty transactions, the NPRM replaced minimum rating requirements with a requirement that the credit union conduct a credit analysis of the counterparty based on a standard approved by the credit union's board. For provisions not related to investment and counterparty suitability, the NPRM generally deleted references to ratings without requiring a substitute analysis.

II. Public Comments

The public comment period for the NPRM ended on May 2, 2011, and NCUA received 11 comments. In general, most of the commenters did not support the proposal. While many acknowledged that the Dodd-Frank Act requires NCUA to remove ratings references, they opposed replacing the ratings with a credit analysis tied to a narrative description, arguing that it was too subjective and would cause confusion. These commenters generally did not propose alternative standards of creditworthiness. A number of commenters stated that the proposal went beyond the requirements of the Dodd-Frank Act, arguing that the legislation does not prohibit financial institutions from using credit ratings. The NCUA Board notes that nothing in the NPRM prohibited credit unions from using credit ratings as an element of the required credit analysis.

A few commenters responded to NCUA's request for comments on alternative standards of creditworthiness. One suggested that NCUA publish a list of acceptable ''safe harbor'' investments. The NCUA Board believes that establishing such a list would effectively transfer credit union risk management to NCUA. Credit union boards and management teams are in a better position to assess the appropriateness of investment instruments and transactions based on their credit unions' unique risk preferences, portfolio objectives, and balance sheet composition. A safe harbor provision exempts an investor from due diligence responsibility and could be viewed as NCUA's tacit

[1] Public Law 111–203, 124 Stat. 1376 (2010) sec. 939A.

[2] 76 FR 11164 (Mar. 1, 2011).

[3] An NRSRO is an entity registered with the U.S. Securities and Exchange Commission (SEC) under section 15E of the Securities Exchange Act of 1934. *See* 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[4] 12 CFR parts 703, 704, 709, and 742.

endorsement of the suitability of certain investments.

Without providing specific numbers, another commenter suggested generally that an alternative standard could be based on credit spreads. The NCUA Board does not support this approach because credit spreads are a function of open markets and they reflect investor interest for reasons that include, but are not limited to, credit risk. Market credit spreads for various asset classes experience variability depending on current supply and demand for the product, actual market interest rates, and a variety of other factors. While the NCUA Board declines to establish specific allowable credit spreads, it notes that FCUs and corporates may use credit spread information as a factor in assessing changes in creditworthiness.

Several commenters suggested that NCUA wait to finalize alternative standards of creditworthiness until other financial institution regulators have proposed or finalized standards. Since the NCUA Board issued the NPRM, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have issued final rules replacing credit ratings with alternative creditworthiness standards similar to those the NCUA Board proposed in the NPRM. Further, the SEC has issued comparable proposed rules. We discuss these final and proposed rules below. We also discuss how the NCUA Board has adjusted the replacement credit standards in this final rule from those in the NPRM.

Several commenters requested more guidance on how a credit union's board of directors should establish credit quality standards for counterparties. In general, a credit union board should clearly articulate the institution's risk tolerance for counterparty credit risk by approving relevant policies, including a framework for establishing limits on individual counterparty exposures and concentrations of exposures. In turn, senior management should establish and implement a comprehensive risk measurement and management framework consistent with this risk tolerance that provides for the ongoing monitoring, reporting, and control of counterparty credit risk exposures. The policies and framework should be appropriate to the size, nature, and complexity of the credit union's counterparty credit risk profile.

III. Actions of Other Regulators

The OCC and FDIC have issued final rules replacing NRSRO-based security creditworthiness standards.[5] The new rules redefine an ''investment grade'' security as one where the issuer has an adequate capacity to meet all financial commitments under the security for the projected life of the security. To meet this new standard, national banks and federal and state savings associations must determine that the risk of default by the obligor is low and that the full and timely repayment of principal and interest is expected.

The SEC has proposed to remove references to credit ratings in its regulations governing investments made by mutual funds.[6] The proposal includes replacing creditworthiness standards that reference credit ratings with standards that would reflect evaluating other criteria. It would replace a requirement that a security purchased by a money market mutual fund be rated in ''one of the two highest short-term rating categories'' with a standard that the security have minimal credit risk. The determination of minimal credit risk would be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations. Under the SEC's proposed rule 2a-7, while the mutual fund's board of directors must independently determine that an investment has minimal credit risk, it would be permitted to continue using credit ratings as one factor to make that determination.[7]

The SEC also has proposed to amend the Broker-Dealer Net Capital Rule to remove references to credit ratings.[8] That rule currently applies lower capital requirements to certain types of securities held by broker-dealers if the securities are rated in high rating categories by at least two NRSROs. Under the SEC's proposal, for commercial paper, nonconvertible debt, and preferred stock to qualify for the lower capital requirements, a broker-dealer would be required to establish, maintain, and enforce written policies and procedures designed to assess a security's credit and liquidity risks. Based on this process, the broker-dealer would have to determine that the investment poses only a ''minimal amount of credit risk.''

Under the SEC's proposed amendments, a broker-dealer could consider various factors in assessing a security's credit risk. These factors could include credit spreads, securities-related research, internal or external credit risk assessments (including credit ratings), and default statistics. The preamble to the SEC's proposal states that the criteria are meant to capture securities that should generally qualify as investment grade under the current ratings-based standard ''without placing undue reliance on third-party credit ratings.''

IV. Final Rule Standard

In response to comments that the NPRM's proposed creditworthiness standards are confusing, and taking into account the other federal financial regulatory agencies' final and proposed rules, the NCUA Board is replacing the various NRSRO-based security creditworthiness standards in NCUA regulations with only two standards: ''Investment grade'' and ''minimal amount of credit risk.'' An investment grade security is one where the credit union determines that the issuer has an adequate capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low, and the full and timely repayment of principal and interest on the security is expected. A security with a minimal amount of credit risk is one where the credit union determines that the issuer has a very strong capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has a very strong capacity to meet all financial commitments if the risk of default by the obligor is very low, and the full and timely repayment of principal and interest on the security is expected. As discussed below, ''investment grade'' is used in part 703 and, with one exception, ''minimal amount of credit risk'' is used in part 704.

In evaluating the creditworthiness of a security, a credit union may consider any of the following factors, to the extent appropriate:

- Credit spreads (*i.e.,* whether it is possible to demonstrate that a security

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[5] 77 FR 35253 (June 13, 2012); 77 FR 43151 (July 24, 2012).

[6] 76 FR 12896 (Mar. 9, 2011).

[7] Specifically, the SEC proposal states: ''Nothing in the proposed rule would prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule as long as the board concluded that the [credit] ratings specified in the policies and procedures establish similar standards to those proposed and are credible and reliable for that use.'' 76 FR 12899 (Mar. 9, 2011) n.32.

The SEC's March 9, 2011, proposal also notes that in addition to referencing credit ratings, the SEC rules already require a mutual fund board of directors to determine that a security meets the requisite investment standards based on factors ''in addition to any ratings assigned.'' Thus, under the SEC's current rule, a mutual fund may not purchase an investment based on the credit rating alone.

[8] 76 FR 26550 (May 6, 2011).

is subject to a particular amount of credit risk based on the spread between the security's yield and the yield of Treasury or other securities);

• Securities-related research (*i.e.,* whether providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally or specifically, with respect to the securities held by the credit union);

• Internal or external credit risk assessments (*i.e.,* whether credit assessments developed internally by the credit union or externally by a credit rating agency, irrespective of its status as an NRSRO, express a view as to a particular security's credit risk);

• Default statistics (*i.e.,* whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with a particular amount of credit risk);

• Inclusion on an index (*i.e.,* whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a specific amount of credit risk);

• Priorities and enhancements (*i.e.,* the extent to which a security is covered by credit enhancements, such as overcollateralization and reserve accounts);

• Price, yield, and/or volume (*i.e.,* whether the price and yield of a security are consistent with other securities that the credit union has determined are subject to a particular amount of credit risk and whether the price resulted from active trading); and

• Asset class-specific factors (*e.g.,* in the case of structured finance products, the quality of the underlying assets).

NCUA will discuss these and other factors in supervisory guidance to be provided to FCUs and corporates before the effective date of this final rule.

Several commenters argued that the rule itself, not just the preamble, should explicitly state that a credit union may consider third-party assessments in evaluating the financial strength of issuers and counterparties. The NCUA Board agrees and has included the above list of resources, including external risk assessments, in the new regulatory definitions of ''investment grade'' and ''minimal amount of credit risk'' discussed below.

V. Specific Amendments to NCUA Regulations

a. Part 703—Investment and Deposit Activities

Definitions

Section 703.2 contains definitions of terms related to the investment activities of natural person FCUs.[9] Three of the definitions refer to credit ratings.

Deposit Note

Section 703.2 defines ''deposit note'' as an obligation of a bank that is similar to a certificate of deposit ''but is rated.'' The NPRM deleted the definition of ''deposit note'' entirely, as the term is standard in the securities industry. NCUA received no comments on this deletion, and the NCUA Board is adopting it as proposed.

Mortgage Related and Small Business Related Securities

Section 107(15)(B) and (C) of the FCU Act[10] provides authority for an FCU to purchase a mortgage related security, as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (Exchange Act),[11] and a small business related security as that term is defined in section 3(a)(53) of the Exchange Act.[12] Section 703.2 defines ''mortgage related security'' and ''small business related security'' by referencing and quoting the Exchange Act definitions. Prior to July 20, 2012, the Exchange Act definitions contained references to NRSRO ratings. The Dodd-Frank Act removed the NRSRO references from the Exchange Act definitions, effective July 20, 2012, providing instead that each type of security must meet standards of creditworthiness as established by the SEC.[13]

The NPRM amended § 703.2 by retaining the cross-references to the Exchange Act but removing the quotations from the Exchange Act in the definitions of mortgage related security and small business related security. Under the proposal, an FCU could not purchase a mortgage related security or small business related security unless it determined that the security meets the SEC's definition of the term. Several commenters stated that NCUA should delay modifying the definitions of mortgage related security and small business related security until the SEC has established the requisite standards of creditworthiness. While the SEC has not established a final standard of creditworthiness, it has established a transitional standard so that markets can continue to function.[14] Accordingly, the NCUA Board is adopting the definitions as proposed.

Investment Grade

For clarity, the NCUA Board is adding a definition of ''investment grade'' to part 703. Under the definition, a security is considered to be investment grade if the issuer of that security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low, and the full and timely repayment of principal and interest on the security is expected. An FCU may consider any or all of the following factors, to the extent appropriate, with respect to a security's credit risk: credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors.

Broker-Dealers and Safekeepers

Sections 703.8(b)(3) and 703.9(d) list a number of factors that FCUs should consider when evaluating the reliability of broker-dealers and investment safekeepers, respectively.[15] One factor is NRSRO reports. The NPRM replaced the NRSRO reference in those sections with the phrase ''external assessments of creditworthiness.'' NCUA received no comments on §§ 703.8(b)(3) and 703.9(d), and the NCUA Board is adopting the revision as proposed.

Permissible Investments

Section 703.14 establishes standards for permissible investments for FCUs.[16] Section 703.14(e) provides that an FCU may purchase a municipal security that an NRSRO has rated in one of the four highest rating categories.[17] The NPRM removed the minimum rating requirements, substituting a requirement that the FCU demonstrate that the issuer of a security has at least an adequate capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. As discussed above, the final rule labels such a standard ''investment grade.''

[9] 12 CFR 703.2.

[10] 12 U.S.C. 1757(15)(B) and (C).

[11] 15 U.S.C. 78c(a)(41).

[12] 15 U.S.C. 78c(a)(53).

[13] Dodd-Frank Act, sec. 939(e).

[14] 77 FR 42980 (July 23, 2012).

[15] 12 CFR 703.8(b)(3), 703.9(d).

[16] 12 CFR 703.14.

[17] 12 CFR 703.14(e).

Under the final rule, an FCU may purchase a municipal security if it conducts and documents a credit analysis that reasonably concludes the security is at least investment grade, as defined in § 703.2.

To further limit the risk associated with the purchase of municipal securities, the NPRM added new concentration limits on such holdings. Specifically, it required an FCU to limit its aggregate holdings of municipal securities to no more than 75 percent of the FCU's net worth and its holdings of municipal securities issued by any single issuer to no more than 25 percent of the FCU's net worth.

One commenter suggested that municipal security concentration limits should distinguish between general obligation and revenue bonds. The commenter suggested that an appropriate aggregate limit would be 100 percent of net worth for general obligation bonds and 25 percent of net worth for revenue bonds. The NCUA Board disagrees with this suggestion. The NCUA Board acknowledges that general obligation bonds and revenue bonds are considered separate asset classes by many investors. These municipal securities, like all capital market instruments, undergo structural changes over time resulting in changing risk profiles. The risk of loss to a FCU may be similar with both types of municipal securities if there were an adverse event at the issuer level. Therefore, limiting exposure to any single obligor to 25 percent of net worth is prudent to mitigate risks of loss to the NCUSIF.

Section 703.14(g) permits an FCU to purchase a European financial options contract for the purpose of hedging the risk associated with issuing share certificates with dividends tied to an equity index.[18] There are a number of conditions for any such purchase, including that the counterparty meet certain NRSRO ratings requirements and that the aggregate amount of such index-linked certificates not exceed the FCU's net worth. The NPRM removed the reference to the NRSRO ratings and instead required that the counterparty meet credit standards approved by the FCU's board. To mitigate any risk associated with the removal of credit ratings in this context, the proposal tightened the concentration limit from 100 percent of the FCU's net worth to 50 percent of the FCU's net worth. NCUA received no comments specifically on this section, and the NCUA Board is adopting it as proposed.

Section 703.14(h) permits an FCU to invest in mortgage note repurchase transactions under certain conditions, including that the counterparty meet certain NRSRO ratings requirements and that the aggregate amount of the investments with all counterparties be limited to 100 percent of the FCU's net worth.[19] The NPRM removed the reference to the NRSRO ratings, requiring instead that the counterparty meet credit standards approved by the FCU's board. The proposal also lowered the aggregate concentration limit to 50 percent of the FCU's net worth. NCUA received no comments specifically on this section, and the NCUA Board is adopting it as proposed.

In the time between the issuance of the NPRM and this final rule, the NCUA Board added a new § 703.14(j) to permit FCUs to purchase certain commercial mortgage related securities (CMRS) and deleted part 742 of the regulations governing NCUA's Regulatory Flexibility (RegFlex) Program.[20] Before these 2012 rule changes, § 703.16(d) generally prohibited FCUs from purchasing private label CMRS, but § 742.4(a)(6) permitted RegFlex credit unions to purchase such a security provided, among other things, the security was rated in one of the two highest rating categories by at least one NRSRO.[21] The NPRM removed the NRSRO requirement from former § 742.4(a)(6), replacing it with the requirement that the issuer have a very strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. New § 703.14(j) was made final with the ratings-based requirement because it preceded this final rule. Consistent with the discussion above, however, the NCUA Board is replacing this ratings-based requirement with a requirement that the FCU conduct and document a credit analysis that reasonably concludes the security is at least investment grade.

Grandfathered Investments

Part 703 grandfathers certain specific securities and transactions purchased or entered into before or within certain dates.[22] Several commenters argued that this final rule should explicitly provide that investments purchased under existing credit rating requirements are also grandfathered. The NCUA Board disagrees. As a matter of sound practice, FCUs must manage the credit risk inherent in their investment securities and transactions by taking into account the risk of deterioration. FCUs have an ongoing obligation to reevaluate creditworthiness and address deterioration as appropriate. An FCU's initial evaluation of credit quality is not a permanent justification for asset retention.

b. Part 704—Corporate Credit Unions

Definitions

Section 704.2 contains definitions of terms related to the investment activities of corporates.[23] The NPRM eliminated the definition of ''NRSRO'' and deleted references to NRSROs in the definitions of ''asset-backed commercial paper (ABCP) program'' and ''small business related security.'' NCUA received no comments on these proposed changes, and the NCUA Board adopts them in the final rule.[24]

In § 704.2, the definition of ''eligible ABCP liquidity facility'' provides that if the assets that the facility is required to fund against have received NRSRO ratings at the time of the facility's inception, the facility can be used to fund only those assets that are rated investment grade by an NRSRO at the time of funding.[25] The NPRM removed the NRSRO references, providing instead that a facility can be used to fund only those assets or exposures that demonstrate adequate capacity to meet their financial obligations, even under adverse economic conditions, for the projected life of the asset or exposure. As discussed above, this ''investment grade'' standard no longer contains an explicit rating requirement. Under the final rule, an eligible ABCP liquidity facility can be used to fund only those assets or exposures the corporate credit union reasonably concludes are at least investment grade.

The NCUA Board is adding definitions of ''investment grade'' and ''minimal amount of credit risk'' to § 704.2. ''Investment grade'' has the same meaning as in part 703, and ''minimal amount of credit risk'' means the issuer of a security has a very strong capacity to meet all financial

[18] 12 CFR 703.14(g).

[19] 12 CFR 703.14(h).

[20] 77 FR 31981 (May 31, 2012).

[21] *See* 12 CFR 703.16(d), 742.4(a)(6).

[22] 12 CFR 703.18, as amended by 77 FR 31981 (May 31, 2012).

[23] 12 CFR 704.2.

[24] While NCUA's authority to regulate the investment activities of natural person FCUs is limited by the FCU Act, *see* discussion above under ''Part 703—Investment and Deposit Activities,'' its authority to regulate the investment activities of corporate credit unions is less limited. *See* 12 U.S.C. 1766(a) (providing that corporate credit unions are subject to such rules, regulations, and orders as the NCUA Board deems appropriate). Accordingly, NCUA may revise the definition of ''small business related security'' in part 704 without regard to section 107(15)(C) of the FCU Act, 12 U.S.C. 1757(15)(C).

[25] 12 CFR 704.2.

commitments under the security for its projected life, even under adverse economic conditions. In both cases, a corporate may consider the following factors with respect to a security's credit risk: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors.

Credit Risk Management

Section 704.6(f) establishes minimum credit quality standards for corporate credit union investments.[26] The standards include that each investment must have an NRSRO rating and that at least 90 percent of a corporate's investment portfolio must have at least two such ratings. The standards further require long-term investment ratings of at least AA−, short-term ratings of at least A−, and monitoring of the ratings as long as a corporate holds the investment.

The NPRM removed the minimum rating requirements, providing instead that for an investment to be permissible, it must be originated by an issuer that has at least a very strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. This standard applied to both long-term and short-term investments. The NPRM also required a corporate to monitor any changes in credit quality of the investment as long as it held the investment.

The NCUA Board has decided to label this standard ''minimal amount of credit risk.'' This standard requires a higher level of credit quality than the ''investment grade'' standard discussed above, as it requires an issuer to have a ''very strong'' rather than just ''adequate'' capacity to meet financial commitments. The higher standard is appropriate for corporates given their mission of providing liquidity to natural person credit unions in a wide range of economic circumstances. The 2010 comprehensive overhaul of NCUA's corporate credit union regulations was designed to enable corporates to serve primarily as liquidity facilities and payment system providers.[27] As liquidity facilities, corporates must maintain high quality, marketable investments that can be sold quickly, without incurring undue loss, to fund loan and share demands. Securities with higher credit quality naturally are more marketable than those with lower quality. Thus, the NCUA Board does not intend for the elimination of references to credit ratings to fundamentally change the standards that corporates should use when deciding whether a security is eligible for purchase. To enhance the ability of NCUA and corporate capital holders to monitor this process, the NCUA Board is considering modifying the corporate Call Report to require additional investment disclosures.

Accordingly, under § 704.6(f)(1) of this final rule, a corporate may purchase an investment only if it conducts and documents a credit analysis that reasonably concludes the security has no more than a minimal amount of credit risk. In addition, under § 704.6(f)(2) of this final rule, a corporate must monitor any changes in the credit quality of the investment and retain appropriate supporting documentation as long as the corporate owns the investment.

At the time the NPRM was issued, § 704.6(f)(4) required a corporate to develop an investment action plan if an NRSRO that initially rated a security later downgraded the rating below the minimum requirements. The NPRM modified this to require an investment action plan if the issuer no longer had a very strong capacity to meet its financial obligations for the security. Between the issuance of the NPRM and this final rule, the NCUA Board revised § 704.6 by moving paragraph (f)(4) to a new paragraph (h).[28] Like former paragraph (f)(4), new paragraph (h)(1) requires a corporate to develop an investment action plan if an NRSRO that initially rates an investment later downgrades the rating below the minimum requirements. In light of the changes to the creditworthiness standard in § 704.6(f)(1) discussed above, the NCUA Board is revising § 704.6(h)(1) to trigger the requirement to prepare an investment action plan if appropriate monitoring of the investment would lead to the reasonable conclusion that the investment's credit quality has more than a minimal amount of credit risk.

Section 704.6(g) requires a corporate to maintain documentation for each credit limit with each obligor or transaction counterparty, including rating agency information. The NPRM deleted the reference to rating agency information. NCUA received no comments on this section, and the NCUA Board adopts it as proposed.

Expanded Authorities

Under Part I of Appendix B to part 704, corporates that meet certain conditions may purchase investments with lower credit ratings than the general AA requirement of § 704.6(f). Part I allows corporates to purchase investments with long-term ratings of at least A− and short-term ratings of at least A−2. In addition, in the latter case, the issuer must have at least a long-term rating no lower than A− or the investment must be a domestically-issued asset-backed security. The NPRM replaced these ratings requirements with a requirement that an issuer have at least a strong capacity to meet its financial obligations. In this final rule, the NCUA Board has determined to permit corporates that qualify for Part I authorities to purchase securities that are at least investment grade. As discussed above, with respect to part 703, a security is considered to be investment grade if the issuer of that security has adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. This standard permits more credit risk than the ''minimal amount of credit risk'' standard. A corporate that has been approved for Part I authorities has additional systems that will enable it to appropriately monitor this additional credit risk to ensure that the investments held remain marketable.

Part II of Appendix B to part 704 authorizes qualifying corporates to purchase certain foreign investments provided, among other things, the sovereign issuer and/or the country in which the obligor is organized has a long-term foreign currency debt rating no lower than AA−. The NPRM deleted the NRSRO reference, providing instead that a corporate may purchase a foreign investment only pursuant to an explicit policy established by the corporate's board of directors. The NPRM also required a corporate to determine that a foreign issuer or issuer had at least a very strong capacity to meet its financial obligations. The NCUA Board has decided to replace this standard with a requirement that the issue or issuer have no more than a minimal amount of credit risk.

In accordance with the NPRM discussion, the NCUA Board is replacing the ratings requirement in Part III of Appendix B to part 704 with a requirement that a counterparty meet minimum credit quality standards as established by the corporate's board of directors.

Risk-Based Capital

Appendix C to Part 704 explains how a corporate must compute its risk-weighted assets for purposes of

[26] 12 CFR 704.6(f).

[27] *See* 75 FR 64786 (Oct. 20, 2010).

[28] 76 FR 79531 (Dec. 22, 2011).

determining its capital ratios. In the definitions section, ''traded position'' is defined with reference to an NRSRO rating and is used only in paragraphs II(c)(3) and (4).[29] Paragraphs II(c)(3) and (4) provide alternative methods for calculating the risk weights of certain assets. Since these alternative methods involve reliance on NRSRO ratings, the NPRM deleted these paragraphs, as well as the definition of ''traded position.'' The NPRM added a new paragraph II(c)(3) which allowed a corporate with advanced risk management and reporting systems to seek NCUA approval to use an internal ratings-based approach to calculate risk-weights for those positions.[30] The NCUA Board received no comments on these aspects of the NPRM and is adopting them as proposed.

The NPRM also removed other ratings-based requirements in Appendix C, replacing several with board of director standards and one, in paragraph II(a)(2)(viii)(A), with a requirement that a qualifying securities firm demonstrate at least a strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of an exposure. The NCUA Board is replacing this with the ''minimal amount of credit risk'' standard.

c. Part 709—Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

Part 709 of the NCUA regulations governs the involuntary liquidation of FCUs and the adjudication of creditor claims involving federally insured credit unions (FICUs).[31] Section 709.10(b) provides that NCUA will not use its authority to repudiate contracts under Section 207(c) of the FCU Act[32] to reclaim, recover, or recharacterize financial assets transferred by a FICU in connection with a securitization or in the form of a participation. Section 709.10(f) provides that NCUA will not attempt to avoid an otherwise legally enforceable securitization or participation agreement solely because the agreement does not meet the requirements of sections 207(b)(9) and 208(a)(3) of the FCU Act. These sections provide that, to be enforceable against NCUA, any agreement that tends to diminish or defeat NCUA's interest in an asset must be executed contemporaneously with the acquisition of the asset by the credit union.[33]

Section 709.10(a)(5) sets forth a definition of ''securitization'' that includes a reference to NRSRO ratings. The NPRM deleted paragraph (a)(5) and references to securitization in paragraphs (b), (f), and (g), with the rationale that credit unions do not securitize assets within the meaning of part 709. In addition, the proposal deleted paragraph (a)(6), defining ''special purpose entity,'' as this phrase is only used in the definition of ''securitization.''

Although NCUA received no comments on the proposed changes to part 709, this final rule retains the language relating to securitizations. In conformance with the requirements of the Dodd-Frank Act, however, the NCUA Board is replacing the definition of ''securitization'' in part 709, which contains an NRSRO reference, with the definition in part 704, which does not. Section 709.10(a)(5) now defines a ''securitization'' as the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors.

d. Part 741—Requirements for Insurance

Part 741 prescribes various requirements for obtaining and maintaining federal insurance. It does not contain a reference to NRSRO ratings but does require federally insured, state-chartered credit unions (FISCUs) to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the FCU Act or NCUA regulations.[34] As a consequence of this requirement, and to reduce the possibility that a FISCU will have to establish a special reserve, many states have instituted credit union investment laws that parallel part 703. For example, a state may authorize its state-chartered credit unions to purchase municipal securities rated in one of the four highest rating categories, as § 703.14(e) has provided for FCUs.

Although no changes were proposed to Part 741, one commenter stated that if a FISCU holds a ratings-based investment permissible under state law, that investment should not be considered ''nonconforming'' under § 741.3(a)(2). The NCUA Board agrees that a safe harbor should be preserved, and has added a sentence to § 741.3(a)(2) stating that if a FISCU conducts and documents a credit analysis that reasonably concludes an investment is at least investment grade, as defined in § 703.2, and the investment is otherwise permissible for FCUs, the investment is not considered to be beyond those authorized by NCUA regulations.

e. Part 742—Regulatory Flexibility Program

The NPRM removed an NRSRO requirement from a paragraph in part 742, but as discussed above, the NCUA Board subsequently moved that paragraph to § 703.14(j) and deleted part 742.[35] The NCUA Board's treatment of the relocated paragraph in this final rule is also discussed above.

VI. Regulatory Procedures

a. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those credit unions under $10 million in assets). This final rule removes NRSRO ratings from NCUA's regulations. NCUA data show that credit unions with under $10 million in assets generally do not engage in investment activities that are affected by those portions of the NCUA rules that refer to NRSRO ratings. Accordingly, NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

b. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of a reporting,

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[29] 12 CFR Part 704, Appendix C, Part I(b).

[30] Acceptable internal credit risk rating systems typically: (1) Are an integral part of the corporate's risk management system that explicitly incorporates the full range of risks arising from the corporate's participation in securitization activities; (2) link internal credit ratings to measurable outcomes; (3) separately consider the risk associated with the underlying loans or borrowers and the risk associated with the structure of the particular securitization transaction; (4) identify gradations of risk; (5) use clear, explicit criteria to classify assets into each internal rating grade; 6) employ independent credit risk management or loan review personnel to assign or review the credit risk ratings; (7) include an internal audit procedure to periodically verify that internal risk ratings are assigned in accordance with the corporate's established criteria; (8) monitor the performance of the assigned internal credit risk ratings over time to determine the appropriateness of the initial credit risk rating assignment, and adjust individual credit risk ratings or the overall internal credit risk rating system, as needed; and (9) make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

[31] 12 CFR part 709.

[32] 12 U.S.C. 1787(c).

[33] 12 U.S.C. 1787(b)(9) and 1788(a)(3).

[34] 12 CFR 741.3(a)(2).

[35] 77 FR 31981 (May 31, 2012).

recordkeeping, or disclosure requirement, both referred to as information collections. The Office of Management and Budget (OMB) approved the current information collection requirements in part 703 in 2007 and assigned them control number 3133–0133. OMB approved the current information collection requirements in part 704 and assigned them control number 3133–0129.

We believe that all of the corporate credit unions already have policies and procedures in place for evaluating the credit risk of securities activities, but this final rule may require additional analysis of credit risk for natural person FCUs and thus result in additional burden hours. We estimate that approximately 750 natural person FCUs may need to develop or augment a system for evaluating creditworthiness. We estimate that, on average, the FCUs will spend 20 hours on such a system, resulting in an initial aggregate burden of 15,000 hours. This estimate is based on the fact that many of these FCUs already have some criteria in place for evaluating creditworthiness.

We further estimate that, on average, each of those FCUs will spend an additional 10 hours each year reviewing, adjusting, and applying its system for evaluating creditworthiness, for a total of 7,500 hours across the industry. Once again, this estimate reflects that many of these FCUs already are applying a system of evaluating creditworthiness.

As required by the PRA, NCUA has submitted a copy of this proposal to OMB for its review and approval.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

d. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

e. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. OMB has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 709

Credit unions, Liquidations.

12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements, Requirements for insurance.

By the National Credit Union Administration Board on December 6, 2012.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR parts 703, 704, 709, and 741 as set forth below:

PART 703—INVESTMENTS AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. In § 703.2 remove the definition of *Deposit note,* add a definition of *Investment grade,* and revise the definitions of *Mortgage related security* and *Small business related security* to read as follows:

§ 703.2 Definitions.

* * * * *

Investment grade means the issuer of a security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A Federal credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Mortgage related security means a security as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)).

* * * * *

Small business related security means a security as defined in section 3(a)(53) of the securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

* * * * *

■ 3. In § 703.8, revise paragraph (b)(3) to read as follows:

§ 703.8 Broker-dealers.

* * * * *

(b) * * *

(3) If the broker-dealer is acting as the Federal credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

* * * * *

■ 4. In § 703.9, revise paragraph (d) to read as follows:

§ 703.9 Safekeeping of investments.

* * * * *

(d) Annually, the Federal credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

■ 5. In § 703.14, revise paragraphs (e), (g)(9), (g)(11), (h)(1), (h)(2), and (j)(1) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(e) Municipal security. A Federal credit union may purchase and hold a municipal security, as defined in section 107(7)(K) of the Act, only if it conducts and documents an analysis that reasonably concludes the security is at least investment grade. The Federal credit union must also limit its aggregate municipal securities holdings to no more than 75 percent of the Federal credit union's net worth and limit its holdings of municipal securities issued by any single issuer to no more than 25 percent of the Federal credit union's net worth.

* * * * *

(g) * * *

(9) The counterparty to the transaction meets the minimum credit quality standards as approved by the Federal credit union's board of directors.

* * * * *

(11) The aggregate amount of equity-linked member share certificates does not exceed 50 percent of the Federal credit union's net worth;

* * * * *

(h) * * *

(1) The aggregate of the investments with any one counterparty is limited to 25 percent of the Federal credit union's net worth and 50 percent of its net worth with all counterparties;

(2) At the time the Federal credit union purchases the securities, the counterparty, or a party fully guaranteeing the counterparty, must meet the minimum credit quality standards as approved by the Federal credit union's board of directors.

* * * * *

(j) * * *

(1) The Federal credit union conducts and documents a credit analysis that reasonably concludes the CMRS is at least investment grade.

* * * * *

PART 704—CORPORATE CREDIT UNIONS

■ 6. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

■ 7. In § 704.2:

■ a. Revise the definitions of *Asset-backed commercial paper program* and *Eligible ABCP liquidity facility;*

■ b. Add a definition of *Investment grade* and *Minimal amount of credit risk;*

■ c. Remove the definition of *Nationally Recognized Statistical Rating Organization;* and

■ d. Revise the definition of *Small business related security.*

The revisions and addition read as follows:

§ 704.2 Definitions.

* * * * *

Asset-backed commercial paper program (ABCP program) means a program that primarily issues commercial paper and that is backed by assets or other exposures held in a bankruptcy-remote special purpose entity. The term *sponsor of an ABCP program* means a corporate credit union that:

(1) Establishes an ABCP program;

(2) Approves the sellers permitted to participate in an ABCP program;

(3) Approves the asset pools to be purchased by an ABCP program; or

(4) Administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

Eligible ABCP liquidity facility means a legally binding commitment to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper and that meets the following criteria:

(1)(i) At the time of the draw, the liquidity facility must be subject to an asset quality test that precludes funding against assets that are 90 days or more past due or in default; and

(ii) The facility can be used to fund only those assets or exposures that the corporate credit union has reasonably concluded, based on a documented analysis, are at least investment grade; or

(2) If the assets that are funded under the liquidity facility do not meet the criteria described in paragraph (1) of this definition, the assets must be guaranteed, conditionally or unconditionally, by the United States Government, its agencies, or the central government of an Organization for Economic Cooperation and Development (OECD) country.

* * * * *

Investment grade means the issuer of the security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A corporate credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Minimal amount of credit risk means the amount of credit risk when the issuer of a security has a very strong capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has a very strong capacity to meet all financial commitments if the risk of default by the obligor is very low, and the full and timely repayment of principal and interest on the security is expected. A corporate credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Small business related security means a security that represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under section 107(7) of the Act.

* * * * *

■ 8. In § 704.6, revise paragraphs (f), (g)(2)(iii), and (h)(1) to read as follows:

§ 704.6 Credit risk management.

* * * * *

(f) *Credit ratings*—(1) Before purchasing an investment, a corporate credit union must conduct and document an analysis that reasonably concludes the investment has no more than a minimal amount of credit risk.

(2) A corporate credit union must identify and monitor any changes in credit quality of the investment and retain appropriate supporting documentation as long as the corporate owns the investment.

(g) * * *

(2) * * *

(iii) The latest available financial reports, industry analyses, and internal and external analyst evaluations sufficient to support each approved credit limit.

(h) * * *

(1) Appropriate monitoring of the investment would reasonably lead to the conclusion that the investment presents more than a minimal amount of credit risk; or

* * * * *

■ 9. In Appendix B:

■ a. Remove Part I (a)(2);

■ b. Redesignate Part I (a)(3), (4), and (5) as Part I (a)(2), (3), and (4), respectively;

■ c. Remove Part II (b)(2);

■ d. Redesignate Part II (b)(3), (4), and (5) as Part II (b)(2), (3), and (4), respectively; and

■ e. Revise Part I (a)(1), Part II (b)(1), and Part III (b) to read as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

* * * * *

Part I

* * * * *

(a) * * *

(1) Purchase an investment after conducting and documenting an analysis that reasonably concludes the investment is at least investment grade;

* * * * *

Part II

* * * * *

(b) * * *

(1) Investments must be made pursuant to an explicit policy established by the corporate credit union's board of directors. Before purchasing an investment, the corporate credit union must conduct and document an analysis that reasonably concludes the foreign issue or issuer has no more than a minimal amount of credit risk;

* * * * *

Part III

* * * * *

(b) Credit Quality:

All derivative transactions are subject to the following requirements:

(1) If the intended counterparty is domestic, the counterparty must meet minimum credit quality standards as established by the corporate's board of directors;

(2) If the intended counterparty is foreign, the corporate must have Part II expanded authority and the counterparty must meet minimum credit quality standards as established by the corporate's board of directors;

(3) The corporate must identify the criteria relied upon to determine that the counterparty meets the credit quality requirements of this part at the time the transaction is entered into and monitor those criteria for as long as the contract remains open; and

(4) The corporate must comply with § 704.10 of this part if the credit quality of the counterparty deteriorates below the minimum credit quality standards established by the corporate's board of directors.

* * * * *

■ 10. In Appendix C:

■ a. Remove the definition of *Traded position* from paragraph I(b);

■ b. Revise paragraphs II (a)(2)(viii)(A), II (a)(2)(viii)(B) introductory text, II (b)(1)(iv), II (b)(2)(ii), and II (b)(4):

■ c. Remove paragraphs II (c)(3) and (4);

■ d. Add new paragraph II (c)(3); and

■ e. Redesignate paragraph II (c)(5) and (6) as paragraphs II (c)(4) and (5), respectively.

The revisions and addition read as follows:

Appendix C to Part 704—Risk-Based Capital Credit Risk-Weight Categories

* * * * *

Part II: Risk-Weightings

(a) * * *

(2) * * *

(viii) * * *

(A) A qualifying securities firm must meet the minimum credit quality standards as established by the corporate credit union's board of directors or have at least one issue of long-term unsecured debt that is reasonably determined to present no more than a minimal amount of credit risk, whichever requirement is more stringent. Alternatively, a qualifying securities firm may rely on the creditworthiness of its parent consolidated company, if the parent consolidated company guarantees the claim.

(B) A collateralized claim on a qualifying securities firm does not have to comply with the requirements of paragraph (a) of this section of Appendix C if the claim arises under a contract that:

* * * * *

(b) * * *

(1) * * *

(iv) Unused portions of ABCP liquidity facilities that do not meet the definition of an eligible ABCP liquidity facility. The resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

(2) * * *

(ii) Unused portions of commitments (including home equity lines of credit and eligible ABCP liquidity facilities) with an original maturity exceeding one year except those listed in paragraph II (b)(5) of this Appendix. For eligible ABCP liquidity facilities, the resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

* * * * *

(4) 10 percent credit conversion factor (Group D). Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less. The resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

* * * * *

(c) * * *

(3) Internal ratings-based approach—

(i) Calculation. Corporate credit unions with advanced risk management and reporting systems may seek NCUA approval to use credit risk models to calculate risk-weighted asset amounts for positions described in paragraphs II (c)(1) and (2) of this section of the Appendix C. In determining whether to grant approval, NCUA will consider the financial condition and risk management sophistication of the corporate credit union and the adequacy of the corporate's risk models and supporting management information systems.

(ii) Consistent use of internal ratings-based approach. A corporate credit union that has been granted NCUA approval to use an internal ratings-based approach and that has determined to use such an approach must do so in a consistent manner for all securities so rated.

* * * * *

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATIONS

■ 11. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1767, 1786(h), 1787, 1788, 1789, 1789a.

■ 12. In § 709.10, revise paragraph (a)(5) to read as follows:

§ 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

* * * * *

(a) * * *

(5) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors. Securitization includes transactions that

create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 13. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 14. In § 741.3, revise paragraph (a)(2) by adding a sentence between the first and second sentences to read as follows:

§ 741.3 Criteria.

* * * * *

(a) * * *

(2) * * * For purposes of this paragraph, if a state-chartered credit union conducts and documents an analysis that reasonably concludes an investment is at least investment grade, as defined in § 703.2 of this chapter, and the investment is otherwise permissible for Federal credit unions, that investment is not considered to be beyond those authorized by the Act or the NCUA Rules and Regulations. * * *

* * * * *

[FR Doc. 2012–30076 Filed 12–12–12; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 713

RIN 3133–AD98

Fidelity Bond and Insurance Coverage

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting as a final rule, without change, the interim final rule that the Board issued in May 2012 that amended NCUA's fidelity bond rule. The interim final rule removed references in the fidelity bond rule to NCUA's former Regulatory Flexibility Program (RegFlex), which granted a RegFlex credit union broader authority to choose the deductible amount of its fidelity bond policy.

DATES: Effective December 13, 2012, the interim final rule published May 31, 2012, at 77 FR 31981, is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The NCUA Board (Board) is adopting as a final rule, without change, the interim final rule that the Board issued in May 2012 that amended NCUA's fidelity bond rule.[1] The interim final rule removed references in the fidelity bond rule to NCUA's former Regulatory Flexibility Program (RegFlex), which granted a RegFlex credit union broader authority to choose the deductible amount of its fidelity bond policy.[2] Specifically, the interim final rule amended the standard used for granting authority to a federal credit union (FCU) to choose an increased deductible amount. Before the Board issued the interim final rule, the standard was based on an FCU's assets and status as a RegFlex FCU. The standard used after the interim final rule is based on an FCU's assets, CAMEL ratings, and capital level. The new standard is also used by NCUA in other rules affected by the elimination of RegFlex.

I. Background

What did the interim final rule change and why is NCUA adopting this final rule?

In issuing a proposed rule in 2011 to remove part 742 from NCUA's regulations and eliminate the RegFlex Program,[3] NCUA inadvertently overlooked references to RegFlex in its fidelity bond rule.[4] At that time, the fidelity bond rule established a formula for calculating the maximum deductible an FCU could carry on its fidelity bond based partly on the FCU's asset size. The rule set a cap of $200,000, but permitted RegFlex FCUs with assets in excess of $1 million a higher maximum deductible of up to $1 million.[5] With the issuance of the final rule to eliminate RegFlex, the NCUA Board also issued an interim final rule to amend the fidelity bond rule.[6]

The interim final rule changed the regulatory standard for permitting an FCU to have an increased deductible on its fidelity bond. As noted, the standard used before the interim final rule was that a RegFlex FCU with assets in excess of $1 million had such authority. The standard used after the interim final rule is that such authority is granted to an FCU with assets in excess of $1 million that is, among other things, well capitalized.[7]

Specifically, the interim final rule permits an FCU to choose a maximum deductible amount for its fidelity bond coverage of $1 million if the FCU has: (1) Received a composite CAMEL rating of ''1'' or ''2'' during its last two full examinations and (2) maintained a ''well capitalized'' net worth classification for the immediately preceding six quarters or has remained ''well capitalized'' for the immediately preceding six quarters after applying the applicable risk-based net worth requirement.

Once a year, an FCU meeting the interim final rule's well capitalized standard must review its continued eligibility for a higher deductible under the rule, which is the same approach applied by the Board when it adopted the fidelity bond provisions in 2005.[8] An FCU's continued eligibility will be based on its asset size as reflected in its most recent year-end 5300 call report and its net worth as reflected in that same report. If an FCU that previously qualified for the higher deductible limit has a decrease in assets based on its most recent year-end 5300 call report or its net worth has decreased so that it would no longer qualify under the well capitalized standard in the fidelity bond rule, then it must obtain the coverage otherwise required by Part 713 with an appropriate deductible. A similar result occurs if an FCU meets the assets threshold and its net worth continues to qualify it under the well capitalized standard, but it has failed to receive a CAMEL rating of ''1'' or ''2'' during its most recent examination report.

II. Comments

NCUA received no written responses to its request for comment on the interim final rule.[9] Accordingly, the NCUA Board adopts as final, without change, the interim final rule published in May 2012.[10]

III. Regulatory Procedures

Regulatory Flexibility Act

NCUA must prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). The final rule reframes a

[1] 77 FR 31981 (May 31, 2012).

[2] The Board established RegFlex in 2002. 66 FR 58656 (Nov. 23, 2001). RegFlex relieved FCUs from certain regulatory restrictions and granted them additional powers if they demonstrated sustained superior performance as measured by CAMEL rating and net worth classification.

[3] 76 FR 81421 (Dec. 28, 2011).

[4] 12 CFR 713.6.

[5] 12 CFR 713.6(a)(1), (c).

[6] 77 FR 31981 (May 31, 2012).

[7] See 70 FR 61713 (Oct. 26, 2005) for a broader perspective of the regulatory history of part 713.

[8] Id. at 61714.

[9] 77 FR 31981 (May 31, 2012).

[10] Id.

standard for FCUs in complying with the fidelity bond deductible requirements. NCUA has determined this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

When NCUA issues a final rule, as defined in Section 551 of the Administrative Procedure Act, it triggers a reporting requirement for congressional review of agency rules under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA). The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA.

List of Subjects in 12 CFR Part 713

Credit unions, Insurance, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 6, 2012.

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, the National Credit Union Administration adopts as final, without change, the interim final rule published at 77 FR 31981 (May 31, 2012).

[FR Doc. 2012–30075 Filed 12–12–12; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective December 13, 2012 and is applicable beginning December 4, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CORONADO (LCS 4) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2(a)(i), pertaining to the location of the forward masthead light at a height not less than 12 meters above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c), pertaining to the task light's horizontal distance from the fore and aft centerline of the vessel in the athwartship direction; and Rule 21(a), pertaining to the arc of visibility of the aft masthead light. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by adding, in alpha numerical order by vessel number, an entry for USS CORONADO (LCS 4);

■ B. In Table Four, Paragraph 15 by adding, in alpha numerical order by vessel number, an entry for USS CORONADO (LCS 4);

■ C. In Table Four, Paragraph 16 by adding, in alpha numerical order by vessel number, an entry for USS CORONADO (LCS 4); and

■ D. In Table Five by adding, in alpha numerical order by vessel number, an entry for USS CORONADO (LCS 4). The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i) Annex I
* * *	* *	* *
USS CORONADO	LCS 4	4.91
* * *	* *	* *

* * * * *

Table Four

15. * * *

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwart-ship direction
* * *	* *	* *
USS CORONADO	LCS 4	1.31 meters
* * *	* *	* *

* * * * *

16. * * *

Vessel	Number	Obstruction angle relative ship's headings
USS CORONADO	LCS 4	71° thru 73°. 76° thru 78°. 287° thru 289°.
* * *	* *	* *

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast- head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
*	* *	*	*	*	*
USS CORONADO	LCS 4		X	X	17.9
*	* *	*	*	*	*

Approved: December 4, 2012.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: December 5, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–30140 Filed 12–12–12; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0601; FRL–9760–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; The 2002 Base Year Emissions Inventory for the Pittsburgh-Beaver Valley Nonattainment Area for 1997 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory portion of the Pennsylvania State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), on November 10, 2009. The emissions inventory is part of the November 10, 2009 SIP revision that was submitted to meet nonattainment requirements related to the Pittsburgh-Beaver Valley nonattainment area (hereafter referred to as the Area) for the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on January 14, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0601. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 3, 2012 (77 FR 60339), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the 2002 base year emissions inventory portion of the Pennsylvania SIP revision submitted by the Commonwealth of Pennsylvania on November 10, 2009.

II. Summary of SIP Revision

The 2002 base year emissions inventory submitted by PADEP on November 10, 2009 for the Area includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The pollutants that comprise the inventory are $PM_{2.5}$, coarse particles (PM_{10}), nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2). EPA has reviewed the results, procedures and methodologies for the base year emissions inventory submitted by PADEP. The year 2002 was selected by PADEP as the base year for the emissions inventory per 40 CFR 51.1008(b).

A discussion of the emissions inventory development as well as the emissions inventory can be found in the November 10, 2009 SIP submittal as well as in the NPR. Specific requirements of the base year emissions inventory and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the 2002 base year $PM_{2.5}$ emissions inventory for the Area as a revision to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the $PM_{2.5}$ base year emissions inventory for the Pittsburgh-Beaver Valley 1997 $PM_{2.5}$ nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 27, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding at the end of the table an entry for 2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	*	*	* *	*
2002 Base Year Emissions Inventory for the 1997 fine particulate matter ($PM_{2.5}$) standard.	Pittsburgh-Beaver Valley, PA.	11/10/09	12/13/12 [*Insert page number where the document begins*].	52.2036(p)

■ 3. Section 52.2036 is amended by adding paragraph (p) to read as follows:

§ 52.2036 Base year emissions inventory.

* * * * *

(p) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2002 base year emissions inventory for the Pittsburgh-Beaver Valley 1997 fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Pennsylvania Department of Environmental Protection on November 10, 2009. The base year emissions inventory includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The pollutants that comprise the inventory are $PM_{2.5}$, coarse particles (PM_{10}), nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2).

[FR Doc. 2012–29987 Filed 12–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0825; FRL–9372–1]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in this document. These actions are in response to EPA's granting of emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. The Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective December 13, 2012. Objections and requests for hearings must be received on or before February 11, 2013], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0825, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Pesticide/CFR citation	Contact person
1-Naphthaleneacetic acid 40 CFR 180.155	Keri Grinstead, *grinstead.keri@epa.gov*, (703) 308–8373.
Kasugamycin 40 CFR 180.614	Keri Grinstead, *grinstead.keri@epa.gov*, (703) 308–8373.
Mandipropamid 40 CFR 180.637	Debra Rate, *rate.debra@epa.gov*, (703) 306–0309.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0825 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk on or before February 11, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0825, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each chemical listed. The initial issuance of these final rules announced that EPA, on its own initiative, under FFDCA section 408, 21 U.S.C. 346a, was establishing time-limited tolerances.

EPA established the tolerances because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

The data and other relevant material have been evaluated and discussed in the final rules originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, each of these time-limited tolerances is extended until the date specified below, when each will expire and become automatically revoked. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1-Naphthaleneacetic acid. EPA has authorized under FIFRA section 18 the use of 1-naphthaleneacetic acid on avocado tree limbs that have been pruned or cut back to a stump to suppress excess branch growth (suckering) in California. This regulation extends a time-limited tolerance for the combined residues of the plant growth regulator, 1-naphthaleneacetic acid and its conjugates calculated as 1-naphthaleneacetic acid from the application of 1-naphthaleneacetic acid, its ammonium, sodium, or potassium salts, ethyl ester, and acetamide in or on avocado at 0.05 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2015. A time-limited tolerance was originally published in the **Federal Register** of August 12, 2009 (74 FR 40513) (FRL–8428–3).

Kasugamycin. EPA has authorized under FIFRA section 18 the use of kasugamycin on apples for control of fire blight in Michigan. This regulation extends a time-limited tolerance for residues of the fungicide kasugamycin in or on apple at 0.05 ppm for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2015. A time-limited tolerance was originally published in the **Federal Register** of April 14, 2010 (75 FR 19268) (FRL–8808–7).

Mandipropamid. EPA has authorized under FIFRA section 18 the use of mandipropamid on basil for control of downy mildew in Illinois. This regulation extends a time-limited tolerance for the combined residues of the fungicide mandipropamid and its metabolites in or on basil, fresh at 20 ppm and basil, dried at 240 ppm for an additional 3-year period. These tolerances will expire and are revoked on December 31, 2015. A time-limited tolerance was originally published in the **Federal Register** of September 9, 2011 (76 FR 55799) (FRL–8886–8).

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 1-naphthaleneacetic acid in or on avocados.

The Codex has not established a MRL for kasugamycin in or on apples.

The Codex has not established MRLs for mandipropamid in or on basil commodities.

IV. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 7, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.155, revise the table in paragraph (b) to read as follows:

§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Avocado	0.05	12/31/15

* * * * *

■ 3. In § 180.614, revise the table in paragraph (b) to read as follows:

§ 180.614 Kasugamycin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Apple	0.05	12/31/15

* * * * *

■ 4. In § 180.637, revise the table in paragraph (b) to read as follows:

§ 180.637 Mandipropamid; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Basil, dried	240	12/31/15
Basil, fresh	20	12/31/15

* * * * *

[FR Doc. 2012–30109 Filed 12–12–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XC380

Snapper-Grouper Fishery of the South Atlantic; 2012 Commercial Accountability Measure and Closure for South Atlantic Snowy Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for snowy grouper in the South Atlantic exclusive economic zone (EEZ). Commercial landings for snowy grouper, as estimated by the Science Research Director, are projected to reach the commercial annual catch limit (ACL) on December 19, 2012. Therefore, NMFS closes the commercial sector for snowy grouper on December 19, 2012, for the remainder of the 2012 fishing year. This action is necessary to prevent overfishing of the South Atlantic snowy grouper resource.

DATES: This rule is effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes snowy grouper, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that ACLs and AMs be established to end overfishing and prevent overfishing from occurring. ACLs are levels of annual catch of a stock or stock complex that are set to prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The final rule for Amendment 17B to the FMP established ACLs for eight snapper-grouper species undergoing overfishing, including snowy grouper, and AMs to be implemented if these ACLs are projected to be reached, reached, or exceeded (75 FR 82280, December 30, 2010).

The commercial ACL (commercial quota) for snowy grouper is 82,900 lb (37,603 kg), gutted weight, for the current fishing year, as specified in 50 CFR 622.42(e)(1).

The AMs for snowy grouper, specified at 50 CFR 622.49(b)(2)(i), require NMFS to close the commercial sector for snowy grouper when the commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has projected that the commercial ACL (commercial quota) for South Atlantic snowy grouper will be reached by December 19, 2012. Accordingly, the commercial sector for South Atlantic snowy grouper is closed effective 12:01 a.m., local time, December 19, 2012, until 12:01 a.m., local time, January 1, 2013.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having snowy grouper onboard must have landed and bartered, traded, or sold such snowy grouper prior to 12:01 a.m., local time, December 19, 2012. During this commercial closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1) and (d)(2), respectively, apply to all harvest or possession of snowy grouper in or from the South Atlantic EEZ, and the sale or purchase of snowy grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of snowy grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 19, 2012, and were held in cold storage by a dealer or processor. During the closure, the bag and possession limits and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where the fish were harvested, *i.e.,* in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic snowy grouper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(b)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for snowy grouper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the AMs established by Amendment 17B and located at 50 CFR 622.49(b)(2)(i) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the South Atlantic snowy grouper resource. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–30101 Filed 12–10–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 240
Thursday, December 13, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2012–08]

Limited Liability Partnerships (LLPs)

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing new rules addressing the treatment of limited liability partnerships (''LLPs'') for purposes of the Federal Election Campaign Act (''FECA'' or the ''Act''). LLPs are created under State law and share certain characteristics with both partnerships and corporations. The Commission is considering treating all LLPs that have opted for Federal corporate tax treatment pursuant to the Internal Revenue Service's ''check the box'' provisions, as corporations for purposes of the Act. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at *http://www.fec.gov/fosers/.* Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act, as amended, contains restrictions and prohibitions on contributions made for the purpose of influencing Federal elections. Partnerships, like individuals, may make contributions of up to $2,500 per candidate per election to Federal office; $30,800 aggregate per calendar year to national party committees; and $5,000 aggregate per calendar year to other political committees.[1]

2 U.S.C. 441a(a)(1)

The Act prohibits corporations from making contributions in connection with a Federal election. 2 U.S.C. 441b(a). Instead, corporations may use their general treasury monies to establish separate segregated funds (''SSFs'') and solicit contributions from their restricted classes to their SSFs.[2] 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.5(b), (g). The SSF may then make contributions subject to the Act's contribution limitations, as well as expenditures. An SSF has the same contribution limitations as individuals and partnerships, except that an SSF that is a multicandidate political committee may make contributions of up to $5,000 per candidate per election to Federal office; $15,000 aggregate per calendar year to national party committees; and $5,000 aggregate per calendar year to other political committees.[3]

Partnerships are included in the Act's definition of ''person'' but are not otherwise specifically addressed. The Commission's regulation addressing partnerships is currently found at 11 CFR 110.1(e). This regulation requires that partnership contributions be attributed to the partnership and to each partner,[4] either: (1) In direct proportion to his or her share of the partnership profits; or (2) by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced and these partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. 11 CFR 110.1(e)(1), (2)(i)–(ii). Unlike corporations, this regulation does not contemplate partnerships forming SSFs.

The Act and Commission regulations do not distinguish between types of partnerships. Under the IRS ''check the box'' rules, the IRS provides equal treatment for limited liability companies (''LLCs'') and LLPs. *See* 26 CFR 301.7701–3(c)(1)(i). An LLP is a form of general partnership that provides partners[5] with protection against personal liability for certain partnership obligations, just as shareholders of a corporation may generally be protected against personal liability for corporate obligations. Both forms of business entity may opt for treatment as an association, and consequently for corporate tax treatment, without regard to State law status. *Id.* A partnership that opts for treatment as an association ''contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.'' 26 CFR 301.7701–3(g)(1)(i).

The Commission proposes to revise its rules on partnerships so that LLPs opting for association treatment (''Corporate LLPs'') would be treated as corporations in 11 CFR part 114. Corporate LLPs would no longer themselves be able to make contributions or to attribute them to their partners. Instead, Corporate LLPs could establish SSFs that could solicit contributions from their restricted classes, and would be able to use those funds to make contributions to candidates and political committees. In contrast, LLPs that do not ''check the box'' pursuant to the Internal Revenue Service's provisions would be able to make contributions and those contributions would continue to be attributed to the partnership and its partners.[6]

[1] Contributions to candidates' authorized committees and national party committees are indexed for inflation. 2 U.S.C. 441a(c).

[2] A corporation's ''restricted class'' consists of the corporation's executive and administrative personnel, its stockholders and their families. 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c) and 114.5(g).

[3] These contribution amounts are not indexed for inflation.

[4] No portion of such contribution may be made from the profits of a corporation that is a partner or from any other person who is otherwise prohibited from making Federal Contributions. *See* 11 CFR 110.1(e).

[5] Such partners could include individuals, as well as limited partners, general partners, LLPs, LLCs or corporations.

[6] These partners must be permissible sources under the Act. *See note 4, above.*

On July 28, 2008, the Commission considered an advisory opinion request from Holland & Knight LLP (''Holland & Knight'') asking whether it should be treated as a corporation with the ability to establish an SSF. *See* Advisory Opinion 2008–05 (Holland & Knight). Holland & Knight was an LLP organized under Florida State law that elected to classify itself as an association taxable as a corporation for Federal tax purposes pursuant to 26 CFR 301.7701–3. The Commission concluded that in the absence of Commission regulations otherwise governing the treatment of LLPs, the requestor was a partnership for the purposes of the Act, because the requestor was organized and operated as an LLP, and not as a corporation, under State law. *See* Advisory Opinion 2008–05 (Holland & Knight) at 3.

I. Proposed 11 CFR 110.21 Partnerships

The Commission proposes to move its current partnership provision from current 11 CFR 110.1(e) to new 11 CFR 110.21. This new section would combine the Commission's current partnership rule with a rule addressing the treatment of Corporate LLPs. Accordingly, paragraph (e) of section 110.1 would be removed and reserved.

Proposed section 110.21 would be similar in significant respects to current 11 CFR 110.1(e). Paragraph (a) of proposed 11 CFR 110.21 would provide that all partnerships except Corporate LLPs shall attribute a contribution by the partnership to both the partnership and each individual partner. Paragraph (b) of proposed 11 CFR 110.21 would contain the requirement in current 110.1(e) that the amount limitations apply to partnership contributions, except for Corporate LLPs.

Proposed paragraph (c) would set forth rules addressing Corporate LLPs. Paragraph (c)(1) would define ''limited liability partnership,'' as ''a business entity that is recognized as a limited liability partnership under the laws of the State in which it is established.'' Paragraph (c)(2) would state that an LLP that elects to be treated as a corporation by the Internal Revenue Service shall be considered a corporation for purposes of 11 CFR Parts 100, 113, 114, 115 116 and 9034,[7] except that its restricted class shall consist solely of those persons who receive stock in the association, as well as their families.

The Commission seeks comment on whether it is appropriate to promulgate these rules governing Corporate LLPs, which are modeled after the Commission's LLC rules at 11 CFR 110.1(g). Paragraph 110.1(g) treats any business entity that is recognized as an LLC under the laws of the State in which it was established and that elects to be treated as a corporation for IRS purposes, as a corporation for purposes of the contribution prohibitions of the Act. The Commission issued that rule after receiving several advisory opinion requests over a relatively short period of time on the status of LLCs. *See* Advisory Opinions 1995–11 (Hawthorn) (Commission concluded that a Virginia LLC was neither a corporation nor a partnership under the Act and Commission regulations and that LLC could make contributions), 1996–13 (Townhouse Associate) (same for a DC LLC), 1997–04 (Eckert Seamans Cherin & Mellott, LLC) (same for a Pennsylvania LLC), 1997–17 (Nixon) (Commission concluded that Federal candidate principal campaign committee was generally not prohibited from accepting contributions from Missouri LLCs), 1998–11 (Patriot Holdings) (Commission concluded that California LLC with Federal contactor subsidiaries could generally still make contributions with LLC funds), and 1998–15 (Fitzgerald for Senate) (Commission concluded that Federal candidate principal campaign committee was generally not prohibited from accepting contributions from Illinois LLCs).[8]

II. Payment of LLP SSF Expenses; Soliciting Contributions From the Restricted Class

The Commission seeks comment on two issues presented by the proposed rules. First, the Act permits corporations to pay the administrative, establishment, and solicitation costs of their SSFs without those payments being considered contributions by the corporations to the SSFs. 2 U.S.C. 441b(b)(2)(C). Would it be appropriate for a Corporate LLP to pay these costs? If so, the Commission anticipates that these payments would come from earned assets contributed by the partnership to the newly created association, as described above. Should these payments in turn be attributed among the individual partners, either by explicit agreement or in proportion to their partnership share? Does FECA permit partners to pay more than $5,000 per year, which is the limit on contributions by individuals to SSFs?

The second issue concerns the solicitation of contributions and, specifically, what constitutes a Corporate LLP's restricted class. Solicitations for contributions to a corporation's SSF may be made at any time only to the corporation's restricted class. The restricted class of a corporation consists of its executive and administrative personnel and their families; and the corporation's stockholders and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). ''Executive or administrative personnel'' includes ''individuals employed by a corporation or labor organization who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.'' 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c).

If Corporate LLPs are treated as corporations, and a Corporate LLP formed an SSF, then it follows that the SSF would be allowed to make solicitations at any time for contributions only to the Corporate LLP's restricted class. The Commission's proposed rule defines a Corporate LLP's restricted class solely as those persons who receive stock in the association, as described above, as well as members of their families.[9] Should the Commission expand the pool of persons who would be within a Corporate LLP's restricted class to include certain persons who fit within the Act's definition of ''executive and administrative personnel?'' Using a law firm as an example, there may be managing partners, senior partners and junior partners, associates, contract attorneys, and attorneys ''of counsel,'' all having at least ''professional responsibilities.'' Should they all be included within the restricted class? What administrative personnel, if any, should be included? Again, using a law firm as an example, there may be office managers, administrative managers of practice groups, legal secretaries, paralegals, paralegal managers, human resources managers, recruiters, and other professionals.

Does the structure of a Corporate LLP lend itself to determining ''executive and administrative personnel?'' If it does not, is it appropriate to treat Corporate LLPs as corporations? Assuming the Commission can identify general characteristics of positions

[7] Through these references, a Corporate LLP would be treated consistently as a corporation with respect to all its activities that are subject to the Act and Commission regulations.

[8] These advisory opinions were explicitly superseded by the Commission in 1999 when it promulgated the LLC rules at 11 CFR 110.1(g). *See* Explanation and Justification, Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 FR 37397, 98 (Jul. 12, 1999), available at *www.fec.gov/law/cfr/ej_compilation/1999/1999–10_LLCs.pdf.* Advisory opinions are available on the Commission's Web site at *www.fec.gov/searchao.*

[9] Any contribution to the SSF could only come from permissible sources under the Act. *See note 4, above.*

within a Corporate LLP that would qualify as part of the ''executive and administrative personnel,'' should the Commission issue general rules stating that persons holding positions with certain characteristics are part of the Corporate LLP's restricted class?

The Commission seeks comment on these and other possible approaches to address, if at all, the treatment of Corporate LLPs for purposes of the Act, as well as any other aspect of this rulemaking.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed rules modify how limited liability partnerships may operate pursuant to Federal campaign finance laws. The only economic impact attributable to these proposed rules would be the costs incurred by limited liability partnerships that wish to establish and administer separate segregated funds. This activity is entirely voluntary and any costs associated with it would fall only on entities choosing to establish and administer a separate segregated fund. Therefore, the attached proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter 1 of Title 11 of the Code of Federal Regulations is proposed to be amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 36 U.S.C. 510.

§ 110.1 [Amended]

2. In § 110.1, paragraph (e) is removed and reserved.

3. Add § 110.21 to read as follows:

§ 110.21 Partnerships.

(a) All partnerships, except LLPs governed by paragraph (c) of this section, shall attribute a contribution by the partnership to both the partnership and each individual partner—

(1) In direct proportion to his or her share of the partnership profits, according to instructions that the partnership shall provide to the political committee or candidate; or

(2) By agreement of the partners, as long as—

(i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and

(ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

(b) A contribution by a partnership made in accordance with paragraph (a) of this section shall not exceed the limitations on contributions in 11 CFR 110.1(b), (c), and (d). No portion of any such contribution may be made from the profits of a corporation that is a partner.

(c) Contributions by limited liability partnerships (''LLP'')—

(1) A limited liability partnership is a business entity that is recognized as a limited liability partnership under the laws of the State in which it is established.

(2) An LLP that elects to be treated as a corporation by the Internal Revenue Service shall be considered a corporation for purposes of 11 CFR parts 100, 113, 114 115, 116, and 9034, except that its restricted class shall consist solely of those persons who receive stock in the association pursuant to Internal Revenue Service rules, as well as their families.

On behalf of the Commission.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2012–30029 Filed 12–12–12; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1167; Directorate Identifier 2012–NE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) models Tay 620–15 and Tay 650–15 turbofan engines. This proposed AD was prompted by RRD recalculating the Declared Safe Cyclic Life (DSCL) for certain low-pressure compressor (LPC) rotor disc assemblies operating to the Plan D Flight Mission. This proposed AD would require removing the affected LPC rotor disc assemblies at a new lower recalculated DSCL. We are proposing this AD to prevent failure of the LPC rotor disc assembly, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 11, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11–15827 Dahlewitz, Blankenfelde-Mahlow, Germany; phone: +49 0 33–7086–1944; fax: +49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Operations office (phone: 800 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *Frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1167; Directorate Identifier 2012–NE–36–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA AD 2012–0204, dated October 1, 2012 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The Tay 650–15 and Tay 650–15/10 engine Time Limits Manual Chapter 05–10–01 contains maximum approved life limitations, identified as Declared Safe Cyclic Life (DSCL) for Low Pressure Compressor (LPC) rotor disc assemblies Part Number (P/N) JR31198A and P/N JR34563A operated to the Plan D Flight Mission, which has been recalculated to a lower value.

Decreased DSCL of LPC rotor disc assemblies P/N JR31198A and P/N JR34563A may affect these disc assemblies installed in Tay 650–15 and Tay 650–15/10 engines as well as in Tay 620–15 and Tay 620–15/20 engines.

Failure to take decreased DSCL of affected LPC rotor disc assemblies into account could lead to affected part failure and consequent release of high energy debris potentially resulting in damage to, and/or reduced control of, the aeroplane.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

RRD has issued Alert Service Bulletin TAY–72–A1772 dated August 9, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD requires removing the affected LPC rotor disc assemblies at the new lower recalculated DSCL.

Costs of Compliance

We estimate that this proposed AD will affect 4 engines installed on airplanes of U.S. registry. We also estimate that it would require 4 hours to perform the actions required by this AD. The average labor rate is $85 per hour. Prorated life for the disc assembly is approximately $650 per disc. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,960.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc): Docket No. FAA–2012–1167; Directorate Identifier 2012–NE–36–AD.

(a) Comments Due Date

We must receive comments by February 11, 2013.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) models Tay 620–15 and Tay 650–15 turbofan engines with a low-pressure compressor (LPC) rotor disc assembly, part number (P/N) JR31198A or P/N JR34563A installed.

(d) Reason

This AD was prompted by RRD recalculating the Declared Safe Cyclic Life for certain LPC rotor disc assemblies operating to the Plan D Flight Mission. We are issuing this AD to prevent failure of the LPC rotor disc assembly, uncontained engine failure, and loss of the airplane.

(e) Actions and Compliance

Unless already done, do the following. For engines that have operated to the Plan D Flight Mission configuration, remove the LPC rotor disc assembly from service before accumulating 18,700 engine flight cycles. Do not return to service nor approve for return to service any engine with the affected discs installed that exceeds 18,700 engine flight cycles.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *Frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

(2) Refer to European Aviation Safety Agency AD 2012–0204, dated October 1, 2012, and RRD Alert Service Bulletin TAY–72–A1772, dated August 9, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11 Dahlewitz 15827, Blankenfelde-Mahlow, Germany; phone: +49 0 33–7086–1944; fax: +49 0 33–7086–3276.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 6, 2012.

Robert J. Ganley,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–30065 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1288; Directorate Identifier 2012–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) CF34–8C and CF34–8E turbofan engines with certain part numbers (P/N) of operability bleed valves (OBV) installed. This proposed AD was prompted by three failure events of ring lock fuel fittings on the OBV. Two of those events led to an engine fire. This proposed AD would require the affected OBVs be removed from service and replaced with OBVs eligible for installation. We are proposing this AD to prevent failure of OBV ring lock fuel fittings, engine fuel leakage, uncontrolled fire, and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 11, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact General Electric, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com.* You view the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the ADDRESSES section. Include ''Docket No. FAA–2012–1288; Directorate Identifier 2012–NE–37–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of three failure events of OBV ring lock fuel fittings on GE CF34–8C turbofan engines. Two of those events led to an engine fire. Investigation revealed that the ring lock fittings failed due to fatigue caused by improper broaching of the OBV housing during manufacture, and, improper installation of the ring lock fittings during OBV assembly. GE CF34–8E turbofan engines also use the affected OBVs and would be affected by this proposed AD. This condition, if not corrected, could result in failure of OBV ring lock fuel fittings, engine fuel leakage, uncontrolled fire, and damage to the airplane.

Relevant Service Information

We reviewed GE Service Bulletin (SB) No. CF34–8C–AL S/B 75–0017, dated September 14 2012. We also reviewed GE SB No. CF34–8E–AL S/B 75–0012, dated September 14, 2012. These bulletins describe procedures for removing from service OBVs having an affected P/N.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require for all GE CF34–8C and CF34–8E turbofan engines with an OBV P/N 4121T67P02, P/N 4121T67P03, P/N 4121T67P04, parts manufacturer approval (PMA) P/N 392155–2, PMA P/N 392155–3, or PMA P/N 392155–4 installed, removal of the OBV from service.

Costs of Compliance

We estimate that this proposed AD would affect 300 engines installed on airplanes of U.S. registry. We also estimate that it would take about two hours per engine to perform the actions required by this proposed AD, and that the average labor rate is $85 per hour. Required parts would cost about $25,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $7,551,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

General Electric Company: Docket No. FAA–2012–1288; Directorate Identifier 2012–NE–37–AD.

(a) Comments Due Date

We must receive comments by February 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5A2, CF34–8C5A3, CF34–8C5B1, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 turbofan engines, with an operability bleed valve (OBV) part number (P/N) 4121T67P02, P/N 4121T67P03, P/N 4121T67P04, parts manufacturer approval (PMA) P/N 392155–2, PMA P/N 392155–3, or PMA P/N 392155–4, installed.

(d) Unsafe Condition

This AD was prompted by three failure events of ring lock fuel fittings on the OBV. Two of those events led to an engine fire. We are issuing this AD to prevent failure of OBV ring lock fuel fittings, engine fuel leakage, uncontrolled fire, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) Remove OBVs

(1) For OBVs with fewer than 6,000 operating hours since new on the effective date of this AD, remove the OBV from service before accumulating 12,000 operating hours since new, or within four years after the effective date of this AD, whichever occurs first.

(2) For OBVs with 6,000 or more operating hours since new on the effective date of this AD, remove the OBV from service before accumulating an additional 6,000 operating hours, or within two years after the effective date of this AD, whichever occurs first.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact John Frost, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

(2) Refer to GE SB No. CF34–8C–AL S/B 75–0017, dated September 14 2012, and SB No. CF34–8E–AL S/B 75–0012, dated September 14, 2012, for related information.

(3) For service information identified in this AD, contact General Electric, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com.* You may view the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 4, 2012.

Robert J. Ganley,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–30072 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1226; Directorate Identifier 2012–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by a report of a translating door handle jamming during opening of an aft door. This proposed AD would require replacing the handle shaft with a new single-piece machined handle shaft on the aft entry and service doors, and require revising the maintenance program by incorporating a new airworthiness limitation task. We are proposing this AD to prevent a migrated pin from jamming a translating door handle, which could prevent opening of

the door and impede an emergency evacuation.

DATES: We must receive comments on this proposed AD by January 28, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1226; Directorate Identifier 2012–NM–122–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–17, dated May 24, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There was one reported case of the translating door handle jamming on opening. It was found that the pin on the existing handle shaft could migrate and cause the translating door handle to jam. A jammed translating door handle could prevent the opening of the door and impede evacuation in the event of an emergency.
>
> This [Canadian] AD mandates the installation of the single piece machined handle shaft (ModSum 4–113687) on the aft entry door and the aft service door, as well as the incorporation of the new Airworthiness Limitation (AWL) tasks introduced as a result of this ModSum.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–52–66, Revision A, dated October 24, 2011; and Temporary Revision ALI–122, dated November 4, 2011, to Section 1 Certification Maintenance Requirements, of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Difference Between This AD and the MCAI or Service Information

The MCAI is applicable to airplanes with serial numbers 4001 through 4364. The service information omits serial number 4002. We have omitted serial number 4002 from the applicability of this proposed AD, because it was a flight test airplane that has been decommissioned.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 78 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,596 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $879,528, or $11,276 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–1226; Directorate Identifier 2012–NM–122–AD.

(a) Comments Due Date

We must receive comments by January 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001, and 4003 through 4364 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52; Doors.

(e) Reason

This AD was prompted by a report of a translating door handle jamming during opening of an aft door. We are issuing this AD to prevent a migrated pin from jamming a translating door handle, which could prevent opening of the door and impede an emergency evacuation.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Installation of the Single-Piece Machined Handle Shaft on the Aft Entry Door and the Aft Service Door

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, replace the handle shaft with a new single-piece machined handle shaft on the aft entry and service doors by incorporating Modification Summary (ModSum) 4–113687, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011.

(h) Revision of the Maintenance Program Schedule

(1) Within 30 days after the effective date of this AD, revise the maintenance program by incorporating the information in maintenance Tasks 521200–105 and 524100–105 of Bombardier Temporary Revision (TR) ALI–122, dated November 4, 2011, into Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The compliance time for doing the initial inspections of the handle shafts on the aft entry and service door is within 25,000 flight hours after installation of the new handle shaft specified in paragraph (g) of this AD. Thereafter, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(2) The maintenance program revision required by paragraph (h)(1) of this AD may be done by inserting a copy of Bombardier Temporary Revision ALI–122, dated November 4, 2011, into Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When this TR has been included in general revisions of the maintenance requirements manual, the general revisions may be inserted in the maintenance requirements manual and this TR removed.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–52–66, dated July 25, 2011, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–17, dated May 24, 2012, and the service information identified in paragraphs (k)(1)(i) and (k)(1)(ii) of this AD, for related information.

(i) Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011.

(ii) Bombardier TR ALI–122, dated November 4, 2011, to Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service

information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 5, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30071 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0612; FRL–9761–2]

Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) that establish the public participation requirements for air quality permits. EPA proposes to find that these revisions to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. Texas submitted the public participation provisions in four separate revisions to the SIP on July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011. EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (the Act).

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2010–0612, by one of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Email:* Ms. Adina Wiley at *wiley.adina@epa.gov.*

• *Fax:* Ms. Adina Wiley, Air Permits Section (6PD–R), at fax number 214–665–6762.

• *Mail:* Ms. Adina Wiley, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Ms. Adina Wiley, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2010–0612. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202. The State submittals, which are part of the EPA docket, are also available for public inspection during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–2115; fax number 214–665–6762; email address *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

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I. Background for Our Proposed Action

A. What action is EPA proposing?

The Clean Air Act at section 110(a)(2)(C) requires states to develop and implement permitting programs for attainment and nonattainment areas that cover both construction and modification of stationary sources. EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160–51.164. The EPA originally adopted these rules prior to the creation of the PSD permit program in 1977, which has additional detailed public participation requirements in 40 CFR 51.166(q).[1]

EPA is proposing to approve submittals from the State of Texas as revisions to the Texas State Implementation Plan (SIP) that establish the public participation requirements for air quality permits. EPA proposes to find that these submitted revisions to the Texas SIP comply with the CAA and EPA regulations and are consistent with EPA policies. Texas submitted the public participation provisions in four separate submittals for approval to EPA as revisions to the SIP on July 22, 1998, October 25, 1999, July 2, 2010, and March 11, 2011. EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (the Act).

B. History of EPA Actions on Texas Public Participation for Air Quality Permit Applications

The Texas SIP currently addresses public notice provisions for air quality permits through regulations adopted by the State on June 17, 1998, effective July 8, 1998, at 30 TAC section 116.130—Applicability; section 116.131—Public Notification Requirements; section 116.132—Public Notice Format; section 116.133—Sign Posting Requirements; section 116.134—Notification of Affected Agencies; section 116.136—Public Comment Procedures; and section 116.137—Notification of Final Agency Action. EPA SIP-approved the submitted Sections 116.130, 116.131, 116.132 (except subsections (c) and (d)), 116.133 (except subsections (f) and (g)), 116.134, 116.136, and 116.137 on September 18, 2002 (67 FR 58697), effective October 18, 2002. EPA SIP-approved the submitted Sections 116.132(c) and (d) and 116.133(f) and (g) on March 10, 2006 (71 FR 12285), effective May 9, 2006.

On November 26, 2008, EPA published a proposed limited approval/limited disapproval (LA/LD) of three submittals from the State requesting approval of them as revisions to the Texas SIP pertaining to public notice for air quality permits (see 73 FR 72001). Our proposed LA/LD encompassed revisions submitted by the TCEQ on December 15, 1995; July 22, 1998; and October 25, 1999. Please see the Technical Support Document (TSD) accompanying this action for a complete list of the sections that were the subject of our proposed LA/LD.

On June 2, 2010, the TCEQ adopted amendments to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the Texas SIP. These revised rules were submitted for EPA approval as a SIP revision on July 2, 2010, to address our identified concerns in the proposed LA/LD.

At that time, TCEQ also adopted and submitted to EPA the withdrawal from consideration by EPA of revisions to the Texas SIP that were previously submitted to EPA on October 25, 1999; July 31, 2002; and March 9, 2006. Please see the July 2, 2010 SIP submittal cover letter and the TSD for a complete listing of the sections withdrawn. The cover letter and TSD can be found in the rulemaking docket for this action. To summarize the cover letter, on July 2, 2010, the TCEQ withdrew from EPA's consideration as revisions to the SIP all of the public participation rules previously submitted, except for three subsections: 30 TAC sections 39.411(a) and 55.152(b) as adopted in 1999, and currently amended 30 TAC section 39.418(b)(3), submitted to EPA in 1999 as section 39.418(b)(4).

Upon receipt of the new public notice SIP revision submittal, EPA published a withdrawal of our proposed LA/LD on November 5, 2010 (see 75 FR 68291). In that notice we state that we withdrew our proposed LA/LD of 30 TAC sections 39.201, 39.401, 39.403, 39.405, 39.409, 39.411, 39.413, 39.418, 39.419, 39.420, 39.423, 39.601–39.605, 55.1, 55.21, 55.101, 55.103, 55.150, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.205, 55.209, and 55.211 because these sections are no longer before us for consideration. Additionally, even though the TCEQ left before us for review sections 30 TAC 39.411(a), 39.418(b)(4) and 55.152(b) as adopted October 25, 1999, we withdrew our proposed LA/LD of these subsections. We did not take any further action on these three subsections in the November 5, 2010, notice because we concluded that it was the TCEQ's intent that these three subsections be evaluated with the entirety of the new public participation submittal from July 2, 2010. Our rationale for this approach is fully explained in our November 5, 2010 notice, which can be found in the docket for this rulemaking. In our November 5, 2010 FRN we also withdrew our proposed LA/LD of the submitted sections 116.111, 116.114, 116.116, 116.183, 116.312 and 116.740. We withdrew our action on these submitted sections because they included cross-references to the Chapter 39 public participation rules and we again concluded that it was the TCEQ's intent for these sections to be evaluated with the entirety of the public participation submittal from July 2, 2010. Our November 5, 2010 FRN did not address the submitted repeal of section 116.124; nor has TCEQ withdrawn this repeal from our consideration. Therefore, the October

[1] EPA expanded the NSR regulations in 1973 to require public participation because EPA determined that public participation was necessary to maintain air quality as required by the CAA. *See* 60 FR 45530, at 45548 (*citing* 38 FR 15834, 15836 (1973) and *NRDC* v. *EPA,* No. 72–1522 (D.C. Cir.)). *See also* See 61 FR 38250, at 38276 and 38320.

25, 1999 submitted repeal of section 116.124 remains before EPA for review.

II. Summary of the State Submittals That EPA Is Reviewing

EPA's proposed approval action today addresses portions of four revisions to the Texas SIP submitted on July 22, 1998, October 25, 1999, July 2, 2010, and March 11, 2011.

A. July 22, 1998

On June 17, 1998, the Texas Natural Resource Conservation Commission [2] made general corrections and clarifications to 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. Governor George W. Bush submitted these amendments to EPA for approval as revisions to the Texas SIP in a letter dated July 22, 1998. EPA has taken several rulemaking actions over the years on this submitted SIP revision package. However, we have not previously addressed the submittal of the public participation provisions for permit renewal applications at 30 TAC 116.312. Note that the July 22, 1998 submittal of section 116.312 included a repeal and replacement of section 116.312 as submitted December 15, 1995. Therefore, section 116.312 as submitted July 22, 1998 remains before us for review and supersedes the December 15, 1995 submittal.

B. October 25, 1999

On September 2 and September 29, 1999, the TCEQ adopted regulations to implement Texas House Bill 801 to establish new procedures for public participation in environmental permitting. Governor George W. Bush submitted these amendments to EPA for approval as revisions to the Texas SIP in a letter dated October 25, 1999. The State also submitted the repeal of section 116.124 at that time. On July 2, 2010, the TCEQ formally withdrew from our consideration all submitted components of the October 25, 1999, submittal, with the exception of sections 39.411(a), 39.418(b)(4), 55.152(b), 116.111(b), 116.114(a)(2), 116.114(a)(2)(A), 116.114(a)(2)(B), 116.114(b)(1), 116.114(c)(1)–(3), 116.116(b)(4) and 116.312. These sections were retained for EPA review and will be analyzed with the entirety of the Public Participation revisions submitted on July 2, 2010.

C. July 2, 2010

On June 2, 2010, the TCEQ adopted new and revised regulations concerning Public Notice at 30 TAC Chapter 39; Requests for Reconsideration and Contested Case Hearings; Public Notice at 30 TAC Chapter 55; and Control of Air Pollution by Permits for New Construction or Modification at 30 TAC Chapter 116. Chairman Bryan W. Shaw, Ph.D., submitted these amendments to EPA for approval as revisions to the Texas SIP in a letter dated July 2, 2010. The amendments submitted for approval as revisions to the Texas SIP are as follows: 30 TAC Sections 39.402(a)(1)–(6), (8), and (10)–(12); 39.405(f)(3) and (g), (h)(1)(A)–(4), (6), (8)–(11), (i) and (j); 39.407; 39.409; 39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i) and (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h); 39.418(a), (b)(2)(A) and (c); 39.419(e); 39.420(c)(1)(A)–(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e), and (h); 39.601; 39.602; 39.603; 39.604; 39.605; 55.150; 55.152(a)(1), (2), (5) and (6); 55.154(a), (b), (c)(1)–(3) and (5), and (d)–(g); 55.156(a), (b), (c)(1), (e) and (g); 116.114(a)(2)(B), (a)(2)(C), (c)(2), and (c)(3); and 116.194. As a result of the submitted amendments to 30 TAC Sections 39.411(f)(8)(A) and 39.605(1)(D), the TCEQ requested on July 2, 2010, that EPA remove from the Texas SIP the corresponding two commitments from paragraph 7 of the July 17, 1987 Texas PSD Supplement.

On July 2, 2010, the TCEQ also submitted a request to withdraw from consideration by the EPA, the new and amended rules that were previously submitted to EPA for approval as revisions to the SIP on October 25, 1999; July 31, 2002; and March 9, 2006. The TCEQ's letter withdrew from our consideration all sections of the 1999, 2002, and 2006 submittals except for 30 TAC sections 39.411(a) and 55.152(b) as adopted in 1999, and section 39.418(b)(3), submitted in 1999 as section 39.418(b)(4).

D. March 11, 2011

The TCEQ originally adopted 30 TAC Section 116.194 on January 11, 2006, to establish the public notice provisions for PAL permit applications. The TCEQ submitted these revisions to EPA on February 1, 2006 as a SIP submittal. EPA disapproved these provisions for PAL public notice on September 15, 2010. See 75 FR 56424. On March 11, 2011, the TCEQ resubmitted section 116.194 as adopted January 11, 2006, in addition to the July 2, 2010 amendments to section 116.194. Therefore, section 116.194 as adopted on January 11, 2006, and amended on July 2, 2010, remains before us for review.

The following table identifies the specific sections that were submitted for EPA review and approval into the Texas SIP.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 39.402—Applicability to Air Quality Permits and Permit Amendments.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.402(a)(1)–(3), (a)(6) proposed for approval.
30 TAC 39.405—General Notice Provisions.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.405(f)(3) and (g), (h)(1)(A), (h)(2)–(h)(4), (h)(6), (h)(8)–(h)(11), (i) and (j) proposed for approval.
30 TAC 39.407—Mailing Lists	2010–004–039–LS	July 2, 2010	September 2, 1999	39.407 resubmitted on July 2, 2010.
30 TAC 39.409—Deadline for Public Comment, and Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.409 proposed for approval.

[2] The Texas Natural Resource Conservation Commission is a predecessor agency to the Texas Commission on Environmental Quality. In general, this proposed action will refer to the agency as the TCEQ.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION—Continued

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 39.411—Text of Public Notice.	99030–039–AD	October 25, 1999	September 2, 1999	39.411(a) proposed for approval.
	2010–004–039–LS	July 2, 2010	June 2, 2010	39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i), (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h) proposed for approval.
30 TAC 39.418—Notice of Receipt of Application and Intent to Obtain Permit.	99030–039–AD	October 25, 1999	September 2, 1999	39.418(b)(4) proposed for approval; note that this section was renumbered to 39.418(b)(3) as a result of the July 2010 submittal.
	2010–004–039–LS	July 2, 2010	June 2, 2010	39.418(a), (b)(2)(A), (b)(3) and (c) Proposed for approval.
30 TAC 39.419—Notice of Application and Preliminary Decision.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.419(e) proposed for approval.
30 TAC 39.420—Transmittal of the Executive Director's Response to Comments and Decision.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.420(c)(1)(A)—(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e) proposed for approval.
30 TAC 39.601—Applicability	2010–004–039–LS	July 2, 2010	June 2, 2010	39.601 proposed for approval.
30 TAC 39.602—Mailed Notice	2010–004–039–LS	July 2, 2010	June 2, 2010	39.602 proposed for approval.
30 TAC 39.603—Newspaper Notice.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.603 proposed for approval.
30 TAC 39.604—Sign-Posting	2010–004–039–LS	July 2, 2010	June 2, 2010	39.604 proposed for approval.
30 TAC 39.605—Notice to Affected Agencies.	2010–004–039–LS	July 2, 2010	June 2, 2010	39.605 proposed for approval.
30 TAC 55.150—Applicability	2010–004–039–LS	July 2, 2010	June 14, 2006	55.150 was adopted in 2006 but submitted as part of the 2010 SIP package.
30 TAC 55.152—Public Comment Period.	99030–039–AD	October 25, 1999	September 2, 1999	55.152(b) proposed for approval.
	2010–004–039–LS	July 2, 2010	June 2, 2010	Subsections 55.152(a)(1), (2), (5) and (6) proposed for approval.
30 TAC 55.154—Public Meetings.	2010–004–039–LS	July 2, 2010	June 2, 2010	Subsections 55.154(a), (b), (c)(1)–(3) and (5), (d)–(g) proposed for approval.
30 TAC 55.156—Public Comment Processing.	2010–004–039–LS	July 2, 2010	June 2, 2010	Subsections 55.156(a), (b), (c)(1), (e) and (g) proposed for approval.
30 TAC 116.111—General Application.	99030–039–AD	October 25, 1999	September 2, 1999	116.111(b) introductory paragraph and (1) and (2) proposed for approval.
30 TAC 116.114—Application Review Schedule.	99030–039–AD	October 25, 1999	September 2, 1999	Revisions to 116.114(a)(2) introductory paragraph, new (a)(2)(A), new (a)(2)(B), revisions to (b)(1), and new (c)(1)–(3) proposed for approval.
	2010–004–039–LS	July 2, 2010	June 2, 2010	Revisions to 116.114(a)(2)(B) and (a)(2)(C), (c)(2) and revisions to (c)(3) proposed for approval.
30 TAC 116.116—Changes to Facilities.	99030–039–AD	October 25, 1999	September 2, 1999	New 116.116(b)(4) proposed for approval.
30 TAC 116.124—Public Notice of Compliance History.	98001–116–AI	July 22, 1998	SECTION REPEALED	SECTION PROPOSED FOR REPEAL.
30 TAC 116.194—Public Notification and Comment.	2005–010–116–PR	February 1, 2006	January 11, 2006	Disapproved by EPA September 15, 2010. See 75 FR 56424.
	2010–004–039–LS	July 2, 2010	June 2, 2010	116.194(a) and (b) proposed for approval.
	2010–008–116–PR	March 11, 2011	January 11, 2006	Resubmittal of the January 11, 2006 adoption of 116.194 Proposed for approval.

TABLE 1—RULES SUBMITTED IN EACH SIP REVISION SUBMITTAL THAT ARE AFFECTED BY THIS PROPOSED ACTION—Continued

Section title	Texas rule project number	State submittal date	State adoption date	Rules addressed in this action
30 TAC 116.312—Public Notification and Comment Procedures.	98001–116–AI	July 22, 1998	June 17, 1998	Repealed previous 116.312 that was SIP approved; New adoption of 116.312 proposed for approval.
	99030–039–AD	October 25, 1999	September 2, 1999	Revised to cross-reference Chapter 39 procedures.

E. What are we not addressing in this proposed action?

EPA is severing and taking no action on section 116.116(b)(3) as it was submitted on October 25, 1999. Section 116.116(b)(3) applies to the review and permitting of constructed and reconstructed major sources of hazardous air pollutants (HAPs) under section 112(g) of the Act and 40 CFR Part 63, Subpart B. The process for implementing these provisions is carried out separately from a SIP. SIPs cover criteria pollutants and their precursors, as regulated by NAAQS. Section 112(g) of the Act regulates HAPs, this program is not under the auspices of a CAA section 110 SIP, and this program should not be approved into a SIP. Additionally, the submitted section 116.116(b)(3) is severable from the remainder of the Texas public participation submittals. Because the requirements under section 112(g) are self-implementing under section 112(g) of the Act and under 40 CFR part 63, Subpart B, EPA is severing and taking no action on section 116.116(b)(3).

Additionally, EPA is severing and taking no action at this time on the following public participation provisions that were submitted as SIP revisions in the July 2, 2010 submittal:

- Sections 39.402(a)(4) and (a)(5) establishing applicability of public notice provisions for new Flexible Permits and amendments to Flexible Permits under 30 TAC Chapter 116. EPA finds it appropriate to sever and take no action on these Flexible Permit provisions because the Flexible Permits Program is not currently in the Texas SIP. We disapproved the Flexible Permits Program on July 15, 2010 (75 FR 41312). EPA's disapproval was remanded for further action on August 13, 2012. *State of Texas, et al.* v. *EPA,* Case No. 10–60614 (5th Circuit, Aug. 13, 2012). TCEQ has revised its rules for the Flexible Permits Program, but the State has not yet submitted those revised rules. If TCEQ submits revised rules for the Flexible Permits Program in the near future, EPA will analyze the public notice provisions for Flexible Permits when we take action on that submittal. Alternatively, EPA will analyze and act on the public notice provisions for Flexible Permits when we address the Flexible Permits Program submittal that is in front of us for SIP approval.
- Sections 39.402(a)(10) and 39.419(e)(3) establishing applicability of public notice provisions for applications for permits, registrations, licenses, or other types of authorizations required to construct, operate or authorize a component of the Future Gen. We are severing and taking no action on Section 39.420(h) which establishes response to comment (RTC) procedures for permit applications for Permits for Specific Designated Facilities under 30 TAC Chapter 116, Subchapter L. EPA finds it appropriate to sever and take no action on the Future Gen public notice provisions and the response to comment procedures because we have not yet acted on the underlying Future Gen permit rules at 30 TAC Chapter 116, Subchapter L. We will review and analyze the public notice provisions for Future Gen when we take action on this permit program.
- Section 39.402(a)(12) establishing public participation provisions pertaining to change of location of a portable facility, consistent with the requirements of 30 TAC section 116.178. EPA has not taken action on the underlying permit provisions for the Relocations and Changes of Location of Portable Facilities. We will analyze the public notice provisions for change of location of portable facilities when we take action on the underlying permit provisions at section 116.178.
- Section 39.405(h)(1)(B) providing alternate language newspaper notice requirements for permit applications that are not air quality permit applications. Permit applications that are not air quality permit applications are beyond the scope of the Texas SIP.

III. Technical Analysis of the Texas Public Participation for Air Quality Permit Applications

The Texas air quality permitting program consists of several different types of permit actions including permits for new major sources or modifications subject to PSD or NNSR requirements, PAL permit authorizations at existing major sources, new minor sources or minor amendments, and permit renewals. The Texas public participation program is also tiered, providing different levels and scope of public participation to correspond with the type of permit action. The following sections of this proposed action and the accompanying TSD will analyze the public participation process for each type of permit action to determine whether the submitted process is consistent with federal requirements.

The Texas public participation requirements for air quality permit applications are found in three chapters of the TAC: Chapters 39, 55, and 116. Chapter 39 establishes applicability and general processes and requirements for the public notice documentation. Chapter 55 establishes general requirements for public comment periods, public meetings and processing of public comments. Chapter 116 provides general timelines for public comment period and applicability. Each type of air quality permit application follows the same general public notice procedures as outlined below:

1. Applicant submits air quality permit application to TCEQ.
2. TCEQ reviews the application and determines whether the application is administratively complete. During this process, the TCEQ has 90 days to determine the application is complete or request additional information. See 30 TAC 116.114(a)(1).
3. Once the application is administratively complete, the applicant is required to publish the first notice, the Notice of Receipt of Application and Intent to Obtain Permit (NORI), as applicable. See 30 TAC 39.418. The NORI is a unique feature of the Texas Public Notice Process. The NORI provides information to the public about the receipt of an application and provides basic information about the proposed new source or modification

such as a description of the location and the nature of the proposed activity, a description of the public comment process, and the location where materials will be made available for review. The NORI does not provide any technical information, but rather serves as an indicator of future public notices and actions that may be of interest, enabling the public to anticipate draft permits. The NORI is required for all air quality permit applications subject to the Chapter 39 public notice provisions except for PAL permit applications. Note that certain permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section III.D of this proposed action.

4. TCEQ completes the technical review and makes a preliminary decision. The TCEQ has 180 days from the date a new permit application is administratively complete, or 150 days from the date a permit amendment application is administratively complete, to conduct the technical review and make a preliminary decision. See 30 TAC 116.114(a)(2).

5. The applicant is required to publish the second notice, the Notice of Application and Preliminary Decision (NAPD) when notified by TCEQ of the preliminary decision. See 30 TAC 39.419. The NAPD notice provides the information and notice to the public consistent with federal requirements. The NAPD provides details about the preliminary decision and draft permit and the location where applicable air quality analyses and other technical materials will be made available for public review. Additionally for PSD permit applications, the NAPD includes the degree of increment consumption that is expected. The NAPD is required for all air quality permit applications subject to the Chapter 39 public notice provisions with the exception of permit renewals. The NAPD may be required for permit renewal applications depending on the details of the action. Note that certain permit amendments are exempted from the Chapter 39 public notice provisions as discussed in Section III.D of this proposed action.

6. The TCEQ files the Executive Director's (ED) draft permit and preliminary decision, the preliminary determination summary and air quality analysis with the chief clerk and the clerk posts this information on the TCEQ's Web site. See 30 TAC 39.419(e).

7. The comment period runs for 30 days after the last publication of the NAPD discussed in Step 5. See 30 TAC 55.152(a)(1).

8. A public meeting is held if the ED determines there is a substantial or significant degree of public interest; if the meeting is requested by a member of the legislature representing the general area of the proposed facility/modification; if a public meeting is otherwise required by law; or, in the case of a PSD or NNSR permits, the meeting is requested by an interested person. See 30 TAC 55.154(c).

9. The ED prepares a response to all comments received. See 30 TAC 55.156(b)(1).

10. The ED files the response to comments with the chief clerk as soon as practicable, but not later than 60 days after the end of the comment period. See 30 TAC 55.156(b)(3).

11. The chief clerk will mail or transmit the ED decision and the RTC to the applicant, any person who submitted comments and any person on the mailing list for the permit action. See 30 TAC 55.156(c).

12. The ED will take final action on the permit application within one year of a complete PSD, NNSR, or PAL permit application. The ED will take final action on the permit application within 150 days of receipt of a permit amendment application or 180 days for a permit application that is not a PSD/NNSR/PAL application (i.e, application for new minor or a renewal application). The TCEQ's one-year clock is based on the completion of the technical review and the publication of the NAPD as provided in Step 5. See 30 TAC 116.114(c)(3).

A. Public Participation for Prevention of Significant Deterioration (PSD) Permit Applications

1. Analysis of Submitted Rules

Federal public participation requirements for PSD permit applications are at 40 CFR 51.160, 51.161, and 51.166(q). In Texas, 30 TAC 39.402(a)(2) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for the new major sources or major modifications for facilities subject to Chapter 116, Subchapter B, Division 6 (PSD permits). Every application for a new major source or major modification subject to PSD permitting requirements will go through public notice with both the NORI and NAPD. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The submitted Texas public participation rules establish that the applicant, rather than the State permitting authority, as the legally responsible party for satisfying the public notice requirements for PSD applications. The applicant is required to follow the Texas public notice regulations, which specify the text for the notice documents and specify the additional agencies that will receive notice. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161 and 51.166. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will also respond to each comment received when making a final permit decision. The TCEQ will provide opportunity for a public meeting on the permit application if requested.

2. How do the Texas public notice provisions for PSD permit applications address the deficiencies identified in the proposed LA/LD?

On November 26, 2008, EPA identified several deficiencies in the Texas public participation rules specific to new major sources and modifications subject to PSD permitting requirements. See 73 FR 72001, at 72007–72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for PSD applications addresses our concerns. Please also see section IV.B. of the accompanying TSD.

- *The public participation rules do not require the TCEQ to provide an opportunity for a public hearing for interested persons to appear and submit written or oral comment on the air quality impact of the source, alternatives to it, the control technology required, and appropriate considerations and to provide notice of the opportunity for a public hearing, as required by 40 CFR 51.166(q)(2)(v).*

In the Texas air permit program, the term ''public meeting'' is equivalent to EPA's term ''public hearing''. Section 55.154(a) as submitted July 2, 2010, supports this by stating the purpose of a public meeting is to take public comment. Section 55.154(c)(3) as submitted July 2, 2010, specifies that a public meeting will be held for PSD permit applications when requested by interested persons. Additionally, the

NAPD notice for the PSD permit includes the statement that a public meeting will be held upon request by interested individuals. See 30 TAC 39.411(f)(8)(D). The revised public participation SIP submittals address EPA's concerns and resolve the identified deficiency.

• *The public participation rules do not require that the public notice of a PSD permit contain the degree of increment consumption that is expected from the source or modification as required by 40 CFR 51.166(q)(2)(iii).*

The revised public participation SIP submittals address EPA's concerns. The NAPD notice provisions at 39.411(f)(8)(A) require the public notice document to include the expected degree of increment consumption. Note that the requirement to public notice the expected degree of increment consumption was previously part of paragraph 7 of the Texas PSD Supplement, as submitted to EPA on July 17, 1987, and approved as part of the Texas PSD SIP. On July 2, 2010, the TCEQ officially requested to withdraw this provision of the Texas PSD Supplement from the Texas SIP and requested that EPA approve the provision at 39.411(f)(8) into the Texas SIP in its place. We are proposing that upon final EPA-approval of 30 TAC 39.411(f)(8) into the Texas SIP, EPA will also revise the table at 40 CFR 52.2270(e) to state that the corresponding commitment in paragraph 7 of the PSD supplement has been removed from the Texas SIP and replaced by SIP-approved regulation at 39.411(f)(8)(A).

• *The public participation rules do not require a copy of the public notice of a PSD permit to be sent to State and local air pollution control agencies, the chief executives of the city and county where the source would be located and any State or Federal Land Manager or Indian Governing Body whose lands may be affected by emissions from the source or modification, as required by 40 CFR 51.166(q)(2)(iv).*

The revised public participation SIP submittals address EPA's concerns. Section 39.605 specifies that the applicant will provide a copy of the public notice to the list of individuals who will receive notice of PSD permit applications, consistent with federal requirements. Note that the requirement to send a copy of the public notice of a PSD permit application was previously part of paragraph 7 of the Texas PSD Supplement, as submitted to EPA on July 17, 1987, and approved as part of the Texas PSD SIP. On July 2, 2010, the TCEQ officially requested to withdraw this provision of the Texas PSD Supplement from the Texas SIP and requested that EPA approve the provision at 39.605 into the Texas SIP in its place. We are proposing that upon final EPA-approval of 30 TAC 39.605 into the Texas SIP, EPA will also revise the table at 40 CFR 52.2270(e) to state that the corresponding commitment in paragraph 7 of the PSD supplement has been removed from the Texas SIP and replaced by SIP-approved regulation at 39.605(1)(D).

• *The public participation rules do not require that a response to comments be available prior to final action on the PSD permit, as required by 40 CFR 51.166(q)(2)(vi) and (viii).*

The current public participation SIP submittals address EPA's concerns and resolve the identified deficiency. EPA's PSD rules do not require that a permitting authority provide a response to comments prior to final action on the PSD permit. Rather, EPA's rules at 40 CFR 51.166(q)(2)(vi) require that the permitting authority consider all timely comments and make said comments available at the same location as the preconstruction materials used in the permitting decision. The Texas rules at 30 TAC 55.156(b)(1) comply with EPA regulations by requiring that the TCEQ consider all timely, relevant and material, or significant public comment before an application is approved. Further, when making PSD permit decisions, 30 TAC 55.156(b)(1) specifically requires that the TCEQ ED prepare a response to *all* comments received. The Texas rules at 30 TAC 55.156(b)(1) also require that a response to comments document be prepared prior to the final action on the permit. Interested individuals have access to the response to comments document for each permitting action through the TCEQ's Web site; the address of which is provided in each NAPD notice. The RTC includes a summary of each comment received. The actual comment letters can be obtained from the TCEQ offices.

3. Proposed Findings Specific to the Texas Public Participation Provisions for PSD Permit Applications

EPA's analysis of the Texas public participation requirements for PSD permit applications demonstrates that the submitted provisions are consistent with the Act and EPA regulations at 40 CFR 51.160, 51.161 and 51.166(q). Further, the submitted provisions address all deficiencies previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Therefore, we propose full approval of the Texas public notice provisions for PSD permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

B. Public Participation for Nonattainment New Source Review (NNSR) Permit Applications

1. Analysis of Submitted Rules

Federal public participation requirements for NNSR permit applications are at 40 CFR 51.160 and 51.161. Submitted section 30 TAC 39.402(a)(2) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for new major sources or major modifications for facilities subject to Chapter 116, Subchapter B, Division 5 (NNSR permits). Every application for a new major source or major modification subject to NNSR permitting requirements will go through public notice with both NORI and NAPD. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. The submitted Texas public participation rules establish the applicant, instead of the State permitting authority, as the legally responsible party for satisfying the public notice requirements for PSD applications. The applicant is required to follow the Texas public notice regulations, which specify the text for the notice documents and specify the additional agencies that will receive notice. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested.

2. Proposed Findings Specific to the Texas Public Participation Provisions for NNSR Permit Applications

As explained fully in the accompanying TSD, EPA finds that the public notice process described above for NNSR permit applications satisfies the federal requirements for public notice found at 40 CFR 51.160, 51.161. Also, EPA did not identify any NNSR-specific deficiencies in our November 26, 2008 proposed limited approval/ limited disapproval. Therefore, we propose full approval of the Texas public notice provisions for NNSR permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

C. Public Participation for Plant-Wide Applicability Limit (PAL) Permit Applications

1. Analysis of Submitted Rules

Federal public participation requirements for PALs are established at 40 CFR 51.165(f)(4)(B) and (f)(5) and 51.166(w)(4)(*b*) and (w)(5). Each of these sections specify that PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. Additionally, sections 51.165(f)(5) and 51.166(w)(5) require the reviewing authority provide the public with notice of the proposed approval of a PAL permit; at least a 30-day period for submittal of public comment; and the reviewing authority must address all material comments before taking final action on the permit. Submitted Section 39.402(a)(8) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for the establishment or renewal of, or an increase in, plant-wide applicability limit permits under 30 TAC Chapter 116, Subchapter C. Unlike the public notice provisions for PSD and NNSR permit applications, the Texas public notice process for PAL permit applications only requires publication of the NAPD. Because the NORI is a unique element to the Texas permit program that is not federally required, the NAPD is sufficient to satisfy federal requirements for notice. The Texas rules at 30 TAC 55.152(a)(1) require a 30-day comment period following the publication of the NAPD. And TCEQ's comment processing procedures at 30 TAC 55.156(b)(1) require that the TCEQ ED prepare a response to *all* comments received for any application for the establishment or renewal of, or an increase in, a PAL permit.

2. How do the Texas public notice provisions for PAL permit applications address the deficiencies identified in the proposed LA/LD?

On November 26, 2008, EPA identified several PAL-specific deficiencies in the Texas public participation rules. See 73 FR 72001, at 72008. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for PAL applications addresses our concerns. Please also see section IV.D. of the accompanying TSD.

- *For PALs for existing major stationary sources, there is no provision that PALs be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161, including the requirement that the reviewing authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment, consistent with federal PAL rules at 40 CFR 51.165(f)(5) and (11) and 51.166(w)(5) and (11).*

The July 2, 2010 public participation submittal includes section 39.402(a)(8). Section 39.402(a)(8) specifies that the Chapter 39 provisions apply to the applications for the establishment or renewal of, or an increase in, PAL permit. Tables IV.D–1 and D–2 in our TSD demonstrate that the July 2, 2010 submittal satisfies requirements at 40 CFR 51.160 and 161. Table IV.D–3 in our TSD demonstrates how the July 2, 2010 submittal satisfies 40 CFR 51.165(f)(5) and (11) and 51.166(w)(5) and (11). The July 2, 2010 public participation submittal addresses EPA's concerns and resolves the identified deficiency.

- *For PALs for existing major stationary sources, there is no requirement that the State address all material comments before taking final action on the permit, consistent with 40 CFR 51.165(f)(5) and 51.166(w)(5).*

Sections 39.411(e)(4)(A)(i), 39.411(f)(1) and 55.156(b)(1) as submitted July 2, 2010 satisfy the requirement that the TCEQ address all comments before approving a PAL permit application. The July 2, 2010 public participation submittal addresses EPA's concerns and resolves the identified deficiency.

- *The applicability provision in section 39.403 does not include PALs, despite the cross-reference to Chapter 39 in Section 116.194.*

The July 2, 2010 public participation submittal included section 39.402(a)(8). Section 39.402(a)(8) specifies that the Chapter 39 provisions apply to the applications for the establishment or renewal of, or an increase in, a PAL permit. The July 2, 2010 public participation SIP submittal addresses EPA's concerns and resolves the identified deficiency.

3. Proposed Findings Specific to the Texas Public Participation Provisions for PAL Permit Applications

EPA's analysis of the Texas public participation requirements for PAL permit applications demonstrates that the submitted provisions are consistent with the Act, EPA regulations at 40 CFR 51.160, 51.161, 51.165(f)(4)(B) and (f)(5) and 51.166(w)(f)(4)(*b*) and (w)(5). Further, the submitted rules address all deficiencies previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Therefore, we propose full approval of the Texas public notice provisions for PAL permit applications submitted on July 2, 2010, and March 11, 2011.

D. Public Participation for Minor NSR Permit Applications

1. Analysis of Submitted Rules

TCEQ's revised regulations for public participation increase opportunities for public involvement in Minor NSR permitting decisions compared to the current SIP-approved provisions. TCEQ's current SIP-approved rules at 30 TAC 116.130(a) require public notice with the NORI and NAPD for every application for a new minor source. However, for permit amendment applications, the current SIP-approved rules only require public notice at the discretion of the TCEQ Executive Director. This means that under the existing SIP-approved regulations, many permit amendments are not subject to public notice requirements, and that these rules do not specifically define the conditions upon which the Executive Director can require public notice. TCEQ's revised rules continue to require that *all* applications for new Minor NSR sources go through full public notice with the NORI and NAPD, improve the public notice opportunities for permit amendments, and define conditions for use of the Executive Director's discretion.

TCEQ's revised rules enhance public participation by creating tiered, public notice requirements for permit amendments. Unlike the existing SIP regulations, the revised rules now require that most of permit amendments go through full public notice with the NORI and NAPD. This includes changes to the permits that authorize a change in the character of emissions or a release of an air contaminant not previously authorized, and changes that increase emissions above certain thresholds. But, the new rules retain and refine the TCEQ's director's discretion provisions for two specific types of minor permit amendments—for ''de minimis'' or ''insignificant'' activities. For these amendments, TCEQ will not automatically require an opportunity for public participation. TCEQ justified its approach for permit amendment applications with emissions less than these thresholds using *de minimis* principles like those established in *Alabama Power.*[3]

Despite these thresholds however, the TCEQ revised rules vest the TCEQ Executive Director with the authority to require public notice for an otherwise exempt permit amendment if there is (1) reasonable likelihood of significant public interest in the activity, (2) reasonable likelihood for emissions impact at a nearby receptor, (3) reasonable likelihood of high nuisance potential from the operation of the facility, or (4) the application involves a facility in the lowest classification under Texas Water Code, Section 5.753 and 5.754 and the Compliance History Rules at 30 TAC Chapter 60.

In sum, the applicability of the Texas public participation requirements for Minor NSR permit applications is outlined at 30 TAC 39.402 as follows:

- New minors—39.402(a)(1). A new minor source can be any source statewide that submits a permit application under Chapter 116, Subchapter B that is not subject to the requirements for new major sources or major modifications for NNSR or PSD at Chapter 116, Subchapter B, Divisions 5 and 6.[4]
- Air quality amendments[5] under 30 TAC Chapter 116. Note that a permit amendment is a SIP-approved revision mechanism for an existing Chapter 116, Subchapter B permit. Minor amendments can occur at minor sources or sources that are major for PSD or NNSR whenever:

(a) A change occurs in the character of emissions or release of an air contaminant not previously authorized under the permit (i.e., change in control method or an increase in emission rate)—39.402(a)(3)(A);

(b) The total emissions increase from all facilities to be authorized under the amended permit at a facility not affected by THSC, section 382.020,[6] exceeds the State's established ''de minimis'' levels—39.402(a)(3)(B);

(c) The total emissions increase from all facilities to be authorized under the amended permit at a facility affected by THSC, section 382.020, exceeds the State's established ''insignificant'' levels—39.402(a)(3)(C); or

(d) Other minor amendments where the Executive Director determines reasonable likelihood for interest or impact—39.402(a)(3)(D)(i)–(iv).

- Applications for concrete batch plants without enhanced controls authorized by a standard permit under 30 TAC Chapter 116, Subchapter F[7]—39.402(a)(11).

The notice requirements for each type of Minor NSR permit application listed above are generally the same—meaning that a permit amendment will have the same public notice requirements as an application for a new minor source. The submitted Texas rules generally provide that the identified Minor NSR permit applications (all new minor sources, qualifying minor permit amendments, and concrete batch plants without enhanced controls authorized by a standard permit[8]) will go through public notice consistent with federal requirements at 40 CFR 51.160 and 51.161. These types of Minor NSR permit applications are required to have both NORI and NAPD; therefore, the public will receive notice of the application and have the opportunity to comment on the draft permit and accompanying technical information. Note that the applicant is legally responsible for the publication of the NORI and NAPD, using the specific notice text provided through regulations by the TCEQ. The applicant is also legally responsible for providing copies of the public notice documents to the EPA Regional Office, local air pollution control agencies with jurisdiction in the county, and air pollution control agencies of nearby states that may be impacted by the proposed new source or modification. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161. The NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision, will be made available for public review. The TCEQ will respond to each comment received when making a final permit decision. The TCEQ will also provide opportunity for a public meeting on the permit application if requested.

2. Minor NSR Public Notice Requirements Specific to Two Types of Minor NSR Permit Amendment Applications

As explained above, the submitted Texas public participation provisions create a tiered program, wherein two certain types of Minor NSR amendment applications that have been defined by TCEQ as ''de minimis'' or ''insignificant'' will not automatically require public notice. The following outlines the specific thresholds that qualify as ''de minimis'' or ''insignificant'' under the revised rules, and the basis for TCEQ's determination.

i. Identification of the Minor NSR Emission Thresholds and Affected Source Populations

- Thresholds are only used for permit *amendment* applications. Applications for new Minor NSR sources are now required by these submitted rules to go

[3] See *Ala. Power Co.* v. *Costle,* 636 F.2d 323 (D.C. Cir. 1979).

[4] New minor permit actions do not include Permits-by-Rule (PBRs) or Standard Permits (SPs). New minor permit actions are authorized under the SIP-approved provisions at 30 TAC Chapter 116, Subchapter B. PBRs and SPs are separately authorized under SIP-approved provisions at 30 TAC Chapter 106 and Chapter 116, Subchapter F, respectively. Public notice for PBRs and SPs is outside the scope of the state's July 2, 2010 SIP submittal or the action today.

[5] EPA SIP-approved the Texas permit amendment process at 30 TAC 116.116(b)(1) and (b)(2) on November 14, 2003 as adopted by the TCEQ on August 9, 2000 (see 68 FR 64543). These provisions provide that the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause (A) a change in the method of control of emissions; (B) a change in the character of the emissions; or (C) an increase in the emission rate of any air contaminant. Further, any applicant who requests permit amendments must receive prior approval by the TCEQ ED or the commission. Applications for amendments are subject to the requirements of 30 TAC 116.111. The current SIP requirements of 30 TAC 116.111 were SIP-approved by EPA on August 28, 2007 as adopted by the TCEQ on August 21, 2002 (see 72 FR 49198).

[6] THSC, § 382.020 establishes emission control requirements for selected agricultural facilities such as cotton gins, corn mills, grain elevators, peanut processing and rice drying facilities. THSC § 382.020 applies statewide.

[7] EPA SIP-approved the Texas Standard Permit process and public participation process on November 14, 2003, as adopted by TCEQ on December 16, 1999 (see 68 FR 64543). EPA also SIP-approved revisions to the public participation process for the development of standard permits on September 17, 2008, as adopted by TCEQ September 20, 2006 (see 73 FR 53716).

[8] There are two standard permits applicable to concrete batch plants in the Texas Standard Permit program at 30 TAC Chapter 116, Subchapter F. As discussed previously, EPA approved revisions to the public participation process for the development of standard permits on September 17, 2008, as adopted by TCEQ September 20, 2006 (see 73 FR 53716). Under the Texas SP Program, SPs for concrete batch plants with enhanced controls (i.e., more extensive controls than adequate suction shrouds and filters as specified in the SP) go through no further public notice. However, concrete batch plants without enhanced controls as identified in the SP program are subject to NORI and NAPD publication under 30 TAC Chapter 39.

through the public procedures of the NORI and NAPD. The minor permit amendment applications are further divided based on the amount of emission increases at issue and whether the facility is affected by THSC section 382.020.

- THSC section 382.020 applies to an agricultural facility such as corn mill, cotton gin, feed mill, grain elevator, peanut processing facility or rice drying facility.
  - Section 39.402(a)(3)(B) provides that if the permit amendment application is not for an affected agricultural facility then the public notice provided through the NORI and NAPD apply, unless the total emissions increase from all facilities authorized in the amendment does not exceed any of the following levels established by the State as ''de minimis'' levels:
    - 50 TPY CO
    - 10 TPY SO_2
    - 0.6 TPY lead
    - 5 TPY of NO_X, VOC, PM, or any other contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.
  - Section 39.402(a)(3)(C) provides that if the permit amendment is for an affected agricultural facility, then the public notice requirements of the NORI and NAPD apply, unless the total emissions increase from all authorized facilities in the amendment does not exceed any of the following thresholds established by the State as ''insignificant'' thresholds:
    - 250 TPY CO or NO_X
    - 25 TPY of VOC, SO_2, PM or any other air contaminant except CO_2, H_2O, N_2, CH_4, C_2H_6, H_2 and O_2.
    - A new major stationary source or major modification threshold as defined in section 116.12 of this title
    - A new major stationary source or major modification threshold, as defined in 40 CFR 52.21 under the PSD requirements
- If the permit amendment application includes proposed emissions increases of any air contaminant above the identified threshold then the amendment application is required to go through notice pursuant to Chapter 39 requirements. That means the permit amendment application will go through the NORI and NAPD publication process.

ii. How were the ''De minimis'' and ''Insignificant'' thresholds for minor NSR permit amendments established?

(A). Texas ''De Minimis'' Thresholds for Minor Permit Amendments

The thresholds established by the State as ''de minimis'' thresholds apply to all minor permit amendment applications, except those for affected agricultural facilities. The Texas ''de minimis'' thresholds submitted on July 2, 2010, were originally adopted by the TCEQ in 2001 after a rulemaking process consistent with the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. TCEQ solicited, received and responded to comments during the 2001 rulemaking process. The TCEQ provided further opportunity to comment on the scope of its minor NSR program, and on the selected ''de minimis'' thresholds during the proposal of the July 2010 rulemaking, but there were no additional comments on the ''de minimis'' threshold values.

During the State's rulemaking process for the current Texas public participation rules that have been submitted to the EPA, the TCEQ reviewed its rationale for the scope of the minor NSR program and its rationale for the selection of the ''de minimis'' thresholds. TCEQ found that the rationale developed in 2001 was still relevant and factual; therefore the rationale was resubmitted as part of the July 2, 2010 Public Participation SIP submittal. The TCEQ presents the rationale for the selection of the ''de minimis'' thresholds in the June 18, 2010 Texas Register, pages 5226–5228. The ''de minimis'' thresholds are generally based on EPA's significant emission rates and significant impact levels (which are themselves a percentage of the applicable NAAQS) that together are used to determine whether a proposed source or modification will have a significant impact. The TCEQ also accounted for all averaging periods for each NAAQS in the development of the ''de minimis'' thresholds.

For example, in developing the ''de minimis'' threshold for SO_2, the TCEQ noted that EPA's federal significance level of 40 TPY was based on a design value concentration of 4% of the 24-hour NAAQS. See 45 FR 52675, at 52705–52710 (August 7, 1980), for further information on how EPA established the significance levels for criteria pollutants. The TCEQ determined that a ''de minimis'' emission rate of 10 TPY is more appropriate because it is based on a design value concentration of 1% of the lowest significant impact level (SIL) to NAAQS ratio that would trigger a detailed air quality analysis for any of the three SO_2 NAAQS averaging periods.

Within the scope of the Texas Minor NSR program, the ''de minimis'' thresholds distinguish those minor permit amendment applications that require full review from those that may not. But, the thresholds do not affect any part of the technical review of these minor permit amendment applications or the requirement to comply with other requirements such as application of required control technology, reporting when required to the emissions inventory, and analysis of monitoring data. Additionally, being below the ''de minimis'' threshold does not override any notice or technical requirements for PSD, NNSR or new Minor NSR permit applications. We propose to find that TCEQ provided an adequate demonstration to show that their selected ''de minimis'' thresholds for permit amendments are based on insignificant emission rates and insignificant emissions impact.

(B). Texas ''Insignificant'' Thresholds for Minor Permit Amendments for Selected Agricultural Facilities

The thresholds selected by the State and called ''insignificant'' thresholds apply only to minor permit amendment applications for affected agricultural facilities. TCEQ originally adopted the ''insignificant'' thresholds submitted on July 2, 2010, for minor permit amendment applications at affected agricultural facilities in 2001 after a rulemaking process consistent with the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. TCEQ solicited, received, and responded to comments during the 2001 rulemaking process. The TCEQ provided further opportunity to comment on the selected ''insignificant'' thresholds during the proposal of the July 2010 rulemaking but received no additional comments on the ''insignificant'' threshold values.

During the rulemaking process for the current Texas public participation rules, the TCEQ reviewed the rationale for the selection of the ''insignificant'' thresholds. TCEQ found that the rationale developed in 2001 was still relevant and factual; therefore the rationale was resubmitted as part of the July 2, 2010 Public Participation SIP submittal. The TCEQ presents the rationale for the selection of the ''insignificant'' thresholds in the June 18, 2010 Texas Register, pages 5228–5230. TCEQ states that its discretionary public participation program for selected agricultural facilities with emissions increases below the State's defined ''insignificant'' thresholds is ''intended to focus the attention of the public and the commission on emission increases that could have a greater potential for public interest and questions regarding impacts to public health and welfare.''

TCEQ further provided a review of the sources subject to THSC 382.020 from September 2001 through March 2010. This review indicates that the TCEQ processed 356 permit amendment applications for subject agricultural facilities. These agricultural facilities are located in approximately 88 counties, many of which are rural areas in west Texas, and many of these applications were associated with cotton gins. These amendment applications accounted for about 10% of the amendment applications for all types of facilities (not just these selected agricultural facilities) processed during that time period. The primary pollutant of concern in these applications is particulate matter (PM). No area in Texas is designated as nonattainment for $PM_{2.5}$ (or PM less than 2.5 microns in diameter). El Paso, Texas is designated as nonattainment for PM_{10} (or PM less than 10 microns in diameter); but the designation is based on historical transport of particulate emissions from the Ciudad Juarez, Mexico area. See 59 FR 02532, January 18, 1994. TCEQ reviewed dispersion modeling results from 1990 and 1994 and found that El Paso would be in attainment for the PM standards, but for the emissions transport from Ciudad Juarez. Because the TCEQ has issued no nonattainment or PSD permits for agricultural facilities in the El Paso area and none of the permit amendment applications during the applicable time period were for facilities in El Paso County, the TCEQ has determined that PM emissions generated by the handling, loading, unloading, drying, manufacturing or processing of grain, seed, legumes or vegetable fibers are not of concern in El Paso. Further, the TCEQ has only issued one PSD permit statewide for an agricultural facility under THSC 382.020, and that is for a brewery. Therefore, TCEQ concluded that the ''insignificant'' thresholds for agricultural facilities would not negatively impact the El Paso area or any other area in Texas.

Like, the selected ''de minimis'' thresholds, the state's chosen ''insignificant'' thresholds are used to distinguish those agricultural facilities for which permit amendments require full review from those that may not. However, within the scope of Texas's revised rules, the thresholds do not affect any part of the technical review of these permit amendment applications; or the requirement to continue to comply with other requirements such as application of appropriate control technology, reporting when required to the emissions inventory, and analysis of monitoring data. Further, the discretionary public notice for minor permit amendments at selected agricultural facilities does not override any notice or technical requirements for PSD, NNSR or new Minor NSR permit applications. We believe that TCEQ provided an adequate demonstration to show that their selected ''insignificant'' thresholds for permit amendments for selected agricultural facilities are limited in scope, apply to a limited subcategory of sources, and represent a small subset of the permit amendment universe. We propose to find this demonstration meets 40 CFR 51.160 and 51.161.

3. How do the Texas public notice provisions for minor NSR permit applications address the deficiencies identified in the proposed LA/LD?

The Federal requirements for Minor NSR permit applications and public notice requirements are at 40 CFR 51.160 and 161. These requirements establish the minimum requirements for approvability of a state's Minor NSR SIP, which a state develops to prevent construction and modification of stationary sources from interfering with an area's ability to achieve compliance with a NAAQS. These requirements generally require 30 days public review for all sources subject to the Minor NSR; however, these requirements also allow a State to identify the types and sizes of facilities, buildings, structures, or installations, which will require full preconstruction review by justifying the basis for the State's determination of the proper scope of its program.[9] Importantly, our decision to approve a State's scope of its Minor NSR program must consider the individual air quality concerns of each jurisdiction, and therefore will vary from state to state.

On November 26, 2008, EPA identified several Minor NSR-specific deficiencies in the Texas public participation rules. See 73 FR 72001, at 72007. Below we reiterate the deficiencies and discuss how the revised Texas public participation process for Minor NSR applications submitted for EPA approval on July 2, 2010, address our concerns. In sum, as discussed more fully in the following section, we propose to find that that the July 2, 2010 submitted Tiered public participation requirements improve upon the existing SIP-approved requirements for public notice, that the rules resolve the concerns we expressed in November 2008, and that the regulations satisfy the requirements of 51.160 and 51.161.

Please note that the July 2, 2010 public participation SIP submittal reorganized and restructured some of the previous rule language. As such, the italicized passages below contain references to specific rule citations and provisions that do not have a direct corollary to the July 2, 2010 rules before us now. See the discussion in section I.B of this proposed action for a history of the Texas Public Participation rule submittals. The bulleted list and subsequent analysis demonstrates that the deficiencies EPA previously identified on November 26, 2008, have been addressed through the current public participation submittal of July 2, 2010. Please also see section IV.E. of the accompanying TSD.

- *Under section 39.419(e) for new or modified Minor NSR sources or minor modifications at major sources, the rules do not require public notice and the opportunity for comment on the State's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR 51.161(a) and (b), unless a contested case hearing is requested and not withdrawn after notice of application and intent to obtain a permit (NORI) is published.*

The July 2, 2010 public participation SIP submittal has expanded the requirement to publish the NAPD to all new minor sources or minor modifications under Chapter 116, Subchapter B. See 30 TAC 39.419(e). As demonstrated in the accompanying TSD, the NAPD notice is consistent with 40 CFR 51.161(a) and (b) to provide notice and opportunity to comment on the state's analysis and the preliminary determination. The public participation provisions submitted July 2, 2010 address the identified deficiency.

- *Under section 39.402(a)(3)(C) [Note that during the proposed LA/LD the section we cited was section 39.403(b)(8), this section number was changed to 39.402(a)(3)(C) when the rule was submitted July 2, 2010], for a Minor NSR permit amendment or minor modification under section 116.116(b), (where there is a change in the method of control of emissions; a change in the character of the emissions; or an increase in the emission rate of any air contaminant) the existing SIP requires the permit holder to apply for and receive approval of a permit amendment. However, the revised rules*

[9] For example, under the federal Tribal NSR regulations, EPA did not require permits for sources with emissions below ''*de minimis*'' levels, and for sources in ''insignificant source categories''. 76 FR 38748, at 38755. In sum, under these Tribal NSR regulations, some sources are not required to obtain permits, and have no public notice requirements.

[submitted October 25, 1999] do not require any public participation as required by 40 CFR 51.161(a) and (b) unless the change involves construction of a new facility or modification of an existing facility that results in an increase in allowable emissions equal to or greater than 250 tpy of CO or NO_X*; or 25 tpy of VOC or* SO_2 *or* PM_{10}*; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen or other changes within the discretion of the Executive Director.*

The concern as stated at the time of our proposed LA/LD was that a permit amendment below the identified thresholds would not receive public notice. Nonetheless, as explained above, EPA recognizes a State's ability to tailor the scope of its minor NSR program as necessary to achieve and maintain the NAAQS. As outlined above, the State justified the scope of its regulatory program, and thus the permit applications for which full public review is necessary using *de minimis* principles like those established in *Alabama Power* to identify amendments that are not environmentally significant. Specifically, it identified ''de minimis'' and ''insignificant'' thresholds for which review with public participation may or may not be necessary depending on whether the amendment triggers public review under the specified Executive Director's criteria.

- *Under section 39.419(e)(1)(C), for any amendment, modification or renewal of a major or minor source which requires a permit application, the rules do not require public notice and the opportunity for comment on the State's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval, as required by 40 CFR 51.161(a) and (b), if the amendment, modification, or renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted unless the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.*

At the time of the November 26, 2008 proposed limited approval/limited disapproval, section 39.419 included subsection (e)(1)(C) which exempted minor NSR permit applications from publication of the second notice, or NAPD. In response to our proposed limited approval/limited disapproval, the TCEQ expanded the publication of the NAPD to cover Minor NSR permit applications and specified Minor NSR permit amendment applications. The July 2, 2010 public notice SIP submittal requires NORI and NAPD public notice for all new minor sources and all permit amendments above identified ''de minimis'' and ''insignificant'' emission thresholds. For permit amendment applications with emissions less than these thresholds, the TCEQ justified its approach using *de minimis* principles like those established in *Alabama Power.* See the June 18, 2010 Texas Register, pages 5224–5230. Additionally, requiring NORI and NAPD notice for amendments above a specified emissions threshold is more stringent than the existing SIP; which only requires public notice of minor amendments at the discretion of the Executive Director. The July 2, 2010 SIP submittal addresses the identified concerns.

- *Section 39.403(b)(8), Applicability, of the revised rule refers to two State statutory provisions, THSC section 382.0518 (preconstruction permit) and section 382.055 (review and renewal of preconstruction permit). For clarity, and for approvability into the SIP, section 39.403(b) should be revised to refer to the corresponding sections of the Texas SIP.*

Subsequent to our withdrawal of the proposed rule, EPA has determined that this provision does not contravene federal requirements. Generally, we do not approve cross-references that are not otherwise SIP-approved. But, in these instances, the statutory provisions serve to provide more clarity to the subset of sources identified in the rule language. Note that since the time of the proposed limited approval/limited disapproval, TCEQ has withdrawn from our consideration the prior version of Chapter 39 that was submitted for SIP approval, and resubmitted a new version of Chapter 39. The sections discussing Applicability of the public participation program that include cross-references to statutes are now located at Section 39.402(a)(3)(B) and (C). In this instance, the statute mentioned is THSC section 382.020 concerning agricultural facilities. Inclusion of the statutory citation to THSC section 382.020 provides additional clarity to the submitted provision.

4. Proposed Findings Specific to the Texas Public Participation Provisions for Minor NSR Permitting

We propose to find that the July 2, 2010 submitted public notice provisions, including the tiered public participation approach for permit amendments, improve upon the existing SIP-approved requirements for public notice by expanding opportunities for public involvement in minor NSR permitting decision. We further propose to find that TCEQ's demonstrations in the July 2, 2010 public notice SIP submittal adequately justify the scope of activities that require full review with public participation, because it potentially excludes only those permit amendments that meet the state's selected ''de minimis'' and ''insignificant'' thresholds that the State has shown are environmentally insignificant. Accordingly, EPA proposes to find that TCEQ's tiered public participation program satisfies the provisions of 51.160(e) and 51.161. Moreover, we also propose to find that the TCEQ revised rules for discretionary public notice are approvable, because the provisions adequately confine Executive Director discretion by authorizing the use of discretion under specified criteria that are consistent with the goals and purposes of the Act to provide an adequate opportunity for informed public participation. EPA is proposing to find that the submitted Texas public participation regulations identifying the applicant as the legally responsible party also meet the requirements to provide opportunity for public comment and for information availability at 40 CFR 51.161, because the NORI and NAPD both identify locations where materials, including the draft permit and all technical materials supporting the decision will be made available for public review and the required information is submitted to EPA.

Finally, as explained above, we propose to find that the submitted provisions address all deficiencies we previously cited in our November 26, 2008 proposed limited approval/limited disapproval of Texas public notice requirements. Accordingly, we propose full approval of the Texas public notice provisions for Minor NSR permit applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

E. Public Participation for Permit Renewal Applications

1. Analysis of Submitted Rules

EPA SIP-approved the Texas provisions for renewal of Title I permits at 30 TAC Chapter 116, Subchapter D, Sections 116.310–116.315, on March 10, 2006 (71 FR 12285), with revisions approved on March 20, 2009 (74 FR 11851), March 11, 2010 (75 FR 11464) and November 14, 2011 (76 FR 70354). Therefore, permit renewals issued under 30 TAC Chapter 116, Subchapter D are SIP-approved Title I permits and we have evaluated the public participation requirements for said permits. Section 39.402(a)(6) establishes that the requirements found in 30 TAC Chapter 39, Subchapters H and K apply to applications for renewal of Chapter 116 permits. Section 116.312, Public Notification and Comment Procedures specific to permit renewals, provides a cross-reference to the public participation rules under Chapter 39. Generally, permit renewal applications are required to publish NORI and provide a 15-day comment period. In some instances, permit renewal applications will be required to publish NAPD and provide a 30-day comment period. The TCEQ is required to respond to any comments received and provide a response to comments with the final permit decision. Under the Texas SIP-approved permit renewal process, a Title I permit is required to be renewed every ten years. A permit renewal application is approved based upon a demonstration in the renewal application that the permitted facility will operate in accordance with all requirements and conditions of the existing permit, including representations in the application to construct, any subsequent amendments, any previously granted renewal, and the compliance history of the facility. Parts C and D of the Act and EPA's federal NSR requirements regulate preconstruction of sources and neither prohibit, nor require Title I permits (PSD/NNSR/Minor NSR) to be periodically renewed. As such, the State's renewals provisions go beyond the minimum requirements of the Act. While neither the Act nor EPA's regulations address the public notice of permit renewals, we propose to find that approval of public notice for permit renewals will enhance the SIP-approved renewals program.

2. Proposed Findings Specific to the Texas Public Participation Provisions for Permit Renewal Applications

As explained fully in the accompanying TSD, EPA proposes to find that the public notice process described above for permit renewal applications satisfies the federal requirements for public notice found at 40 CFR 51.160 and 51.161 and is consistent with the requirements at section 110(a)(2)(C) of the Act to provide continued implementation and enforcement of the NSR SIP permitting program. EPA did not identify any renewal-specific deficiencies in our November 26, 2008 proposed limited approval/limited disapproval. Therefore, we propose full approval of the Texas public notice provisions for permit renewal applications submitted on July 22, 1998; October 25, 1999; and July 2, 2010.

F. Does proposed approval of the Texas public participation provisions for air quality permit applications interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?

Section 110(l) of the CAA states:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Thus, under section 110(l), the regulations submitted as a SIP revision for public participation for air quality permit applications must meet the procedural requirements of section 110(l) by demonstrating that the State followed all necessary procedural requirements such as providing reasonable notice and public hearing of the SIP revision. Additionally, the SIP revision must demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. We propose to find that the TCEQ satisfied all procedural requirements pursuant to section 110(l) as detailed in our accompanying TSD.

Public participation in air quality permitting is a requirement of the CAA. EPA regulations at 40 CFR Part 51, sections 51.160 and 51.161 provide the general requirements that all air quality permits must address; sections 51.165(f)(5) and 51.166(w)(5) provide the requirements specific to PAL permitting; and section 51.166(q) provides further public notice provisions specific to PSD permitting. As discussed in this proposed action and in the accompanying TSD, EPA proposes that the public notice processes as submitted by the TCEQ satisfy the minimum requirements of 40 CFR 51.160, 51.161, and where applicable, 51.165 and 51.166. Additionally, we propose that TCEQ provided an adequate demonstration to show that the Minor NSR public notice tiers and exemptions will assure the NAAQS are achieved and that the tiers and exemptions meet the *de minimis* principles set forth in *Alabama Power.* Our review and analysis demonstrates that the submitted regulations are at least as stringent as the minimum federal requirements and existing SIP requirements; and in some instances the Texas program provides notice beyond the minimum federal requirements. The act of providing notice on air quality permit applications consistent with the provisions submitted by the TCEQ on July 22, 1998; October 25, 1999; July 2, 2010; and March 11, 2011 will provide more visibility and detail of the air permitting process. The Texas Public Participation SIP submittals satisfy section 110(l) of the CAA.

IV. Proposed Action

Under section 110 and parts C and D of the Act, and for the reasons stated above, EPA proposes to approve the following revisions to the Texas SIP:

- 30 TAC Section 116.312 and the repeal of 30 TAC Section 116.124 as submitted on July 22, 1998.
- 30 TAC Sections 39.411(a); 39.418(b)(4); 55.152(b); 116.111(b); 116.114(a)(2), (a)(2)(A), (a)(2)(B), (b)(1), and (c)(1)–(3); 116.116(b)(4); and 116.312 as submitted on October 25, 1999.
- 30 TAC Sections 39.402(a)(1)–(3), (a)(6); 39.405(f)(3) and (g), (h)(1)(A), (h)(2)–(h)(4), (h)(6), (h)(8)–(h)(11), (i) and (j); 39.407; 39.409; 39.411(e)(1)–(4)(A)(i) and (iii), (4)(B), (5)(A) and (B), (6)–(10), (11)(A)(i), (iii) and (iv), (11)(B)–(F), (13) and (15), and (f)(1)–(8), (g) and (h); 39.418(a), (b)(2)(A), (b)(3) and (c); 39.419(e); 39.420(c)(1)(A)–(D)(i)(I) and (II), (D)(ii), (c)(2), (d)–(e); 39.601; 39.602; 39.603; 39.604; 39.605; 55.150; 55.152(a)(1), (2), (5) and (6); 55.154(a), (b), (c)(1)–(3) and (5), (d)–(g); 55.156(a), (b), (c)(1), (e) and (g); 116.114(a)(2)(B), (a)(2)(C), (c)(2) and (c)(3); and 116.194(a) and (b) as submitted on July 2, 2010.
- 30 TAC Section 116.194 as adopted January 11, 2006 and resubmitted on March 11, 2011.

Note that EPA is proposing to approve provisions at 30 TAC 39.411(f)(8)(A) and 39.605(1)(D) that will replace two provisions of the Texas SIP, found in the Texas PSD SIP Supplement. Upon finalization of this action, EPA will revise the table at 40 CFR 52.2270(e) to reflect these approvals.

Consistent with the analysis presented in today's proposed notice and the accompanying TSD, EPA is severing and taking no action on the following provisions submitted on July

2, 2010: 30 TAC Sections 39.402(a)(4), 39.402(a)(5), 39.402(a)(10), 39.402(a)(12), 39.405(h)(1)(B), 39.419(e)(3), 39.420(h). EPA is also severing and taking no action on the following provisions submitted on October 25, 1999: 30 TAC Sections 116.111(a)(2)(K), and 116.116(b)(3).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this notice merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 30, 2012.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2012–30098 Filed 12–12–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1100 and FEMA–B–1222]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On May 25, 2010 and October 6, 2011, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to those tables, to be used in lieu of the information previously published. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Iron County, Utah, and Incorporated Areas. Specifically, it addresses the following flooding sources: Coal Creek, Coal Creek Overflow, Coal Creek to Fiddlers Split, Cross Hollow, Greens Lake, North Airport Canal, Old Quichapa Creek Lower, Old Quichapa Creek Upper, Parowan Creek, Quichapa Channel, Quichapa West, Red Creek, Shurtz Creek, Shurtz Creek Shallow, Squaw Creek and Water Canyon.

DATES: Comments are to be submitted on or before March 13, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1100 and FEMA–B–1222, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *luis.rodriguez3@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 29238 and 76 FR 62006, in the May 25, 2010 and October 6, 2011, issues of the **Federal Register**, respectively, FEMA published a table under the authority of 44 CFR 67.4. The tables, entitled ''Iron County, Utah, and Incorporated Areas'' addressed the following flooding sources: Coal Creek, Coal Creek Overflow, Coal Creek to Fiddlers Split, Cross Hollow, Greens Lake, North Airport Canal, Old Quichapa Creek Lower, Old Quichapa Creek Upper, Parowan Creek, Quichapa Channel, Quichapa West, Red Creek, Shurtz Creek, Shurtz Creek Shallow, Squaw Creek and Water Canyon. The tables contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for that flooding source. In this notice, FEMA is publishing a table containing the accurate information, to address these errors. The information provided below should be used in lieu of that previously published in both tables.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective	Modified	Communities affected
Iron County, Utah, and Incorporated Areas				
Coal Creek	Approximately 0.8 mile downstream of West 6600 North.	None	+5542	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 680 feet upstream of the Squaw Creek confluence.	None	+5889	
Coal Creek Overflow	Approximately 1,750 feet downstream of West 3200 North.	None	+5502	Unincorporated Areas of Iron County.
	Approximately 480 feet downstream of Bulldog Road	None	+5656	
Coal Creek to Fiddlers Split	Approximately 370 feet upstream of Midvalley Road	None	+5500	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 925 feet upstream of West 3000 North	None	+5554	
Cross Hollow	Approximately 250 feet downstream of Cross Hollow Road.	None	+5750	City of Cedar City.
	At the upstream side of I–15	None	+6000	
Greens Lake	At the upstream side of I–15	None	+6000	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 0.66 miles upstream of Fir Street	None	+6046	
North Airport Canal	Approximately 175 feet upstream of North Bauer Road West.	None	+5593	City of Cedar City.
	Approximately 125 feet downstream of Airport Road	None	+5611	
Old Quichapa Creek Lower	Approximately 0.6 mile downstream of South 6100 West.	None	+5462	Unincorporated Areas of Iron County.
	At the Old Quichapa Creek Upper confluence	None	+5494	
Old Quichapa Creek Upper	At the Old Quichapa Creek Lower confluence	None	+5494	Unincorporated Areas of Iron County.
	Approximately 750 feet upstream of 400 South	None	+5521	
Parowan Creek	At the upstream side of I–15	None	+5806	City of Parowan.
	Approximately 1.41 miles upstream of Old Highway 91.	None	+6237	
Quichapa Channel	Approximately 0.53 mile downstream of 800 South	None	+5458	City of Cedar City, Unincorporated Areas of Iron County.
	At the downstream side of I–15	+5683	+5682	
Quichapa West	Approximately 0.4 mile downstream of South 6400 West.	None	+5466	Unincorporated Areas of Iron County.
	Approximately 740 feet downstream of 5300 West	None	+5493	
Red Creek	Approximately 0.36 mile downstream of Center Street	None	+5900	Unincorporated Areas of Iron County.
	Approximately 40 feet upstream of Red Creek Road	None	+6061	
Shurtz Creek	At the Old Quichapa Creek Lower confluence	None	+5472	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 485 feet downstream of Triple Road	None	+5772	
Shurtz Creek Shallow	Approximately 1,800 feet downstream of 6100 West	None	+5462	Unincorporated Areas of Iron County.
	Approximately 75 feet downstream of I–15	None	+5693	
Squaw Creek	At the Coal Creek confluence	None	+5876	City of Cedar City.
	Approximately 0.71 mile upstream of 200 South Street.	None	+6085	
Water Canyon	Approximately 60 feet downstream of 100 West Street.	None	+5850	Unincorporated Areas of Iron County.
	Approximately 0.34 mile upstream of Main Street	None	+5918	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Cedar City

Maps are available for inspection at 10 North Main Street, Cedar City, UT 84720.

City of Parowan

Maps are available for inspection at 5 South Main, Parowan, UT 84761.

Unincorporated Areas of Iron County

Maps are available for inspection at the Iron County Engineering Department, 82 North 100 East , Suite 104, Cedar City, UT 84720.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 3, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–29953 Filed 12–12–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2012–0177]

RIN 2127–AK86

Federal Motor Vehicle Safety Standards; Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In August 2006, NHTSA established a regulation that sets forth requirements for data elements, data capture and format, data retrieval, and data crash survivability for event data recorders (EDRs) installed in light vehicles. The requirements apply to light vehicles that are manufactured on or after September 1, 2012, and are equipped with EDRs. However, the regulation does not mandate the installation of EDRs in those vehicles. This notice of proposed rulemaking would establish a new safety standard mandating the installation of EDRs in most light vehicles manufactured on or after September 1, 2014. The EDRs in those vehicles would be required by the new standard to meet the data elements, data capture and format, data retrieval, and data crash survivability requirements of the existing regulation. This proposal would not modify any of the requirements or specifications in the regulation for EDRs voluntarily installed between September 1, 2012 and September 1, 2014.

DATES: You should submit your comments early enough to be received not later than February 11, 2013. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to new information collection requirements to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before February 11, 2013. Comments to OMB are most useful if submitted within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For technical and policy issues: Christopher J. Wiacek, Office of Crashworthiness Standards, NHTSA, 1200 New Jersey Ave. SE., West Building, W43–320, Washington, DC 20590. Telephone: (202) 366–4801.

For legal issues: William Shakely, Office of the Chief Counsel, NHTSA, 1200 New Jersey Ave. SE., West Building, W41–227, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

ADDRESSES: You may submit comments, identified by the docket number at the heading of this notice, by any of the following methods:

Online: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQs.''

Fax: 1–202–493–2251.

Mail: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Comments regarding the proposed information collection should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Telephone:* (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Operations at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

An event data recorder (EDR) is a function or device installed in a motor vehicle to record technical information about the status and operation of vehicle systems for a very brief period of time (i.e., a few seconds) and in very limited circumstances (immediately before and during a crash), primarily for the purpose of post-crash assessment of vehicle safety system performance.[1] EDR data are used to improve crash and defect investigation and crash data collection quality to assist safety researchers, vehicle manufacturers, and the agency to understand vehicle crashes better and more precisely. Additionally, vehicle manufacturers are able to utilize EDR data in improving vehicle designs and developing more effective vehicle safety countermeasures. EDR data can also be used by Advanced Automatic Crash Notification (AACN) systems to aid emergency response teams in assessing the severity of a crash and estimating the probability of serious injury before they reach the site of the crash.

The installation of EDR technology has increased considerably within the light vehicle fleet, as most manufacturers have voluntarily chosen to install some type of EDR capability in their vehicles. The light vehicles most likely to be equipped with EDRs are those that are required to be equipped with frontal air bags, i.e., passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses with a gross vehicle weight rating (GVWR) of 3,855 kilograms (kg) (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less. We estimate that about 92 percent of model year (MY) 2010 passenger cars and other vehicles with a GVWR of 3,855 kg or less have some EDR capability.

In August 2006, NHTSA established 49 CFR Part 563 (Part 563), which sets forth requirements for data elements, data capture and format, data retrieval, and data crash survivability for EDRs. The requirements apply to light vehicles required to have frontal air bags (those with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,595 kg or less)[2] that are manufactured on or after September 1, 2012, and are equipped with EDRs. Thus, the regulation applies to only those vehicles that are voluntarily equipped with EDRs.

This notice of proposed rulemaking would establish a new safety standard mandating the installation of EDRs for all light vehicles that are required to have frontal air bags and are manufactured on or after September 1, 2014. The EDRs in those vehicles would be required by the new standard to meet the data elements, data capture and format, data retrieval, and data crash survivability requirements contained in Part 563. The agency is issuing this proposal because we believe that, without a regulation, EDRs will remain absent from the estimated 8 percent of the current light vehicle fleet that lacks an EDR. We believe that requiring all light vehicles required to have frontal air bags to be equipped with EDRs would help improve vehicle safety for consumers, while imposing relatively limited costs on the automobile industry.

NHTSA is proposing today's NPRM under the National Traffic and Motor Vehicle Safety Act (''Motor Vehicle Safety Act''). Under 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[3] ''Motor vehicle safety standard'' means a minimum performance standard for motor vehicles or motor vehicle equipment. When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[4] The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[5] The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA. In proposing to require the installation of EDRs in most light vehicles manufactured on or after September 1, 2014, the agency carefully considered these statutory requirements.

Placing the mandate in a FMVSS, instead of Part 563, would expand its ability to avail itself of the enforcement authority of the Motor Vehicle Safety Act, making it possible to seek civil penalties for failure to provide an EDR

[1] An EDR does not make an audio or video recording, nor does it log data such as hours of service for commercial operators.

[2] Walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service are excluded from air bag and EDR requirements.

[3] 49 U.S.C. 30111(a).

[4] 49 U.S.C. 30111(b).

[5] Id.

or for failure to provide one that performs properly. We believe that this step is necessary to ensure that all manufacturers install EDRs and that the agency has full and accurate EDR information for all light vehicles required to have frontal air bags.

The benefits of this proposal would be to expand and, therefore, enhance the utilization of the recorded information and lead to further improvements in the safety of current vehicles as well as future ones. A disproportionately high percentage of the light vehicles that would be affected by this proposal are relatively expensive vehicles and thus are significantly more likely than the typical light vehicle to be equipped with advanced safety features and systems, including advanced collision avoidance technologies. Thus, the light vehicles that would be affected by this proposal are the ones on which data regarding real world performance will most likely first be generated. It is important to have EDR data relating to the crash experiences of vehicles with these advanced safety systems so that the agency can, at the earliest possible time, gather enough information about emerging advanced technologies to conduct reliable analyses and make policy judgments. Additionally, the agency's experience in handling unintended acceleration and pedal entrapment allegations has demonstrated that EDR data from a particular vehicle model can have significant value to both the agency and the vehicle's manufacturer to identify and address safety concerns associated with possible defects in the design or performance of the vehicle. To serve this purpose for all light vehicles required to have frontal air bags, EDR data must be available for all such vehicles.

This proposal would not change any of the substantive requirements of Part 563. The agency recognizes that there have been advances in vehicle safety systems and the implementation of new FMVSSs since the publication of the EDR final rule in 2006.[6] However, the issue of whether there should be any changes to the amount and type of information that EDRs must collect is not being considered in this rulemaking. This proposal would also not modify any of the requirements or specifications for EDRs voluntarily installed between September 1, 2012 and September 1, 2014.

We believe that the costs of installing EDRs are minimal because the devices involve the capture into memory of data that are already being processed by the vehicle, and not the much higher costs of providing sensors to obtain much of that data in the first place. The cost for an EDR is estimated to be $20 per vehicle. The estimated total incremental costs associated with this proposal would be $26.4 million (2010 dollars), which reflects the need for technology improvements, as well as assembly costs, compliance costs, and paperwork maintenance costs for those 1.32 million vehicles that have a GVWR of 3,855 kg or less, but do not currently have EDRs. Technological improvements account for the majority of these costs.

The agency acknowledges that consumer privacy concerns persist regarding EDR data: Who owns it, who has access to it and under what circumstances, and what are the purposes for which it may be used. Approximately one dozen states have enacted laws addressing these issues. While these issues are of continued importance in the public discussion on the use of EDR technology, as an agency, we do not have the statutory authority to address many of these privacy issues because they are generally matters of State and Federal law that we do not administer. Within the limits of its authority, NHTSA has consistently sought to promote the recording of vital crash event information and to access and use that information in ways that safeguard privacy. For example, the agency seeks to access EDR data only with the vehicle owner's permission.

II. Background

A. Overview of Event Data Recorder (EDR) Technology

An EDR is a function or device installed in a motor vehicle to record technical information about the status and operation of vehicle systems for a very brief period of time (i.e., a few seconds immediately before and during a crash), primarily for the purpose of post-crash assessment of vehicle safety system performance.[7] In most cases, the type of crash that leads to the capturing of data is a frontal or side collision that is sufficiently severe to cause the air bags to deploy. Data collected from the EDR of a crash-involved vehicle can provide valuable information on the severity of the crash, operation of its air bags, and what air bag deployment decision strategies were used during the event. Additionally, the data can be used to assess whether the vehicle was operating properly at the time of the event, or to help detect undesirable operations that may lead to a recall of the vehicle to remedy the problem. The information obtained by manufacturers from EDRs aids them in improving vehicle performance in crash events.

In recent years, the installation of EDR technology has increased considerably within the light vehicle fleet, as most manufacturers have voluntarily chosen to install some type of EDR capability in their vehicles. The light vehicles most likely to be equipped with EDRs are those that are required to be equipped with frontal air bags, i.e., passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses with a GVWR of 3,855 kilograms (kg) (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less. These vehicles compose the vast majority of light vehicles. We estimate that about 92 percent of model year (MY) 2010 passenger cars and other vehicles with a GVWR 3,855 kg (8,500 pounds) or less have some EDR capability. This estimate is based on information that was taken from manufacturer-reporting to the agency regarding their 2010 vehicles and then weighting using 2010 corporate-level vehicle projected sales figures to estimate an overall industry-wide fleet figure.

For manufacturers that install EDRs in most light vehicles on or after September 1, 2012, the current regulation, 49 CFR Part 563 (Part 563), requires that their EDRs record 15 data elements at a minimum, and sets requirements for the range and accuracy of the EDR data collected under the regulation. The discussion below explains in detail the requirements of Part 563.

For more background information on NHTSA's rulemaking actions regarding EDR technologies, please see the Notice of Proposed Rulemaking (NPRM) at 69 FR 32932 (June 14, 2004),[8] the final rule at 71 FR 50998 (August 28, 2006),[9] and amendments to the final rule and responses to petitions for reconsideration at 73 FR 2168 (January 14, 2008),[10] 76 FR 47478 (August 5, 2011), and 77 FR 47552 (August 9, 2012).

B. EDR Regulatory History—The Establishment of Part 563

For more than a decade, the agency has been assessing the potential value of real-world EDR crash data for improving our understanding of vehicle safety

[6] FMVSS No. 214, ''Side impact protection,'' FMVSS No. 126, ''Electronic stability control,'' and FMVSS No. 226, ''Ejection mitigation,'' all have been updated since the publication in 2006 of the EDR final rule.

[7] An EDR does not make an audio or video recording, nor does it log data such as hours of service for commercial operators.

[8] Docket No. NHTSA–2004–18029.

[9] Docket No. NHTSA–2006–25666.

[10] Docket No. NHTSA–2008–0004.

system performance and our analysis of vehicle crashes. Several years ago, NHTSA working groups [11] examined data elements for the purpose of identifying the most useful set of crash data to aid the agency in achieving its goal of reducing highway deaths.

On August 28, 2006, following public notice and comment, the agency's early research efforts culminated in the publication of a final rule that established Part 563.[12] Part 563 establishes uniform performance requirements for the accuracy, collection, storage, survivability, and retrievability of that set of onboard motor vehicle crash event data in passenger cars and other light vehicles equipped with EDRs.

In response to petitions for reconsideration, the agency amended Part 563 in January 2008 to make several technical changes to the regulatory text and to set a later compliance date of September 1, 2012.[13] The new compliance date helped manufacturers to avoid incurring significant redesign costs for EDR system architectures outside of the normal product cycle. Again in response to petitions for reconsideration, the agency amended Part 563 on August 5, 2011, to revise the acceleration data elements, clarify the event storage definition and make other minor technical modifications.[14] Finally, in response to further petitions for reconsideration, the agency amended Part 563 on August 9, 2012, to revise the steering input data element and delay the compliance date for the data clipping flag requirement.[15]

C. Summary of Part 563

Part 563 regulates EDR-equipped vehicles by specifying a minimum core set of required data elements and accompanying range, accuracy, and resolution requirements for those elements. The regulation also specifies requirements for vehicle manufacturers to make data retrieval tools and/or methods commercially available so that crash investigators and researchers are able to retrieve data from EDRs. Part 563 is technology-neutral, permitting the use of any available EDR technology that complies with the specified performance requirements.

Part 563 applies to passenger cars, MPVs, trucks, and buses with a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,595 kg (5,500 pounds) or less,[16] that are voluntarily equipped with an event data recorder. It also applies to manufacturers of these vehicles, who must ensure the commercial availability of data retrieval tools. The regulation became effective on September 1, 2012.[17]

1. Data Elements Recorded

Part 563 specifies minimum requirements for the types of data that EDR-equipped vehicles are required to record. In all, there are 15 data elements that must be recorded during the interval/time and at the sample rate specified in Table I of Part 563.[18] Some of the required pre-crash data are vehicle speed, engine throttle position, brake use, driver safety belt status, and air bag warning lamp status. Some of the required crash data are measured changes in forward velocity (delta-V) and air bag deployment times.

In addition, a vehicle equipped with an EDR that records any of the 28 data elements listed in Table II of Part 563, identified as ''if recorded,'' must capture and record information according to the minimum interval/time and at the sample rate specified in that table.[19] There are two data elements listed in Table II, identified as ''if equipped.'' If a vehicle carries this equipment, it must record the specified information (i.e., ''frontal air bag deployment, time to nth stage, driver'' and ''front air bag deployment, time to nth stage, right front passenger'').[20]

When retrieved, the data elements collected by the EDR pursuant to Tables I and II must be reported in accordance with the range, accuracy, and resolution requirements specified in Table III. Reported Data Element Format.[21] All three tables have been included in Appendix A to this preamble.[22]

2. Data Retrieval

Part 563 requires that each vehicle manufacturer ensure, by licensing agreement or other means, the commercial availability of retrieval tool(s) for downloading or imaging the required EDR data.[23] The data-imaging tool must be commercially available no later than 90 days after the first sale of the vehicle for purposes other than resale.[24]

3. Data Survivability and Crash Test Performance Requirements

To ensure that data are recorded in a crash and that the data survive the crash, EDRs must record and retain in retrievable condition certain data when the vehicles in which they are installed are tested in accordance with crash test procedures specified in Federal Motor Vehicle Safety Standard (FMVSS) Nos. 208, ''Occupant crash protection,'' and 214, ''Side impact protection.'' [25] These crash tests represent the modes of a majority of real-world crashes and severities observed. For example, several FMVSS No. 208 crash tests are performed at speeds of up to 56 km/h (35 mph), which represent the cumulative delta-V for 99 percent of frontal crashes.[26] The EDR data must be retrievable for no less than 10 days after the crash test.

D. NHTSA's Validation of and Reliance on EDR Data in Its Crash Investigations Relating to Unintended Acceleration

Based on the agency's experience with EDRs over the past decade, as well as with recent investigations of alleged unintended acceleration and pedal entrapment, the agency has found EDR data to be an important tool that provides valuable insight. EDR data provides vehicle-recorded pre-crash information, supplementing information obtained from the driver and physical evidence from the scene.

[11] *See* reports numbered DOT–HS–043334, *Event Data Recorders: Summary of Findings by the NHTSA EDR Working Group,* August 2001, Docket No. NHTSA–1999–5218–9; DOT–HS–809432, *Event Data Recorders: Summary of Findings by the NHTSA EDR Working Group Volume II, Supplemental Findings for Trucks, Motorcoaches, and School Buses,* May 2002, Docket No. NHTSA–2000–7699–6.

[12] 71 FR 50998, 51043 (Aug. 28, 2006), *amended* 73 FR 2168, 2179 (Jan. 14, 2008), *corrected* 73 FR 8408 (Feb. 13, 2008), *amended* 76 FR 47478 (August 5, 2011), *amended* 77 FR 47552 (August 9, 2012).

[13] 73 FR 2168 (Jan. 14, 2008), *corrected* 73 FR 8408 (Feb. 13, 2008). Vehicles that are manufactured in two or more stages, or that are altered after having been previously certified to the Federal motor vehicle safety standards (FMVSS), have a compliance date of September 1, 2013.

[14] 76 FR 47478.

[15] 77 FR 47552.

[16] Walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service are excluded from air bag and EDR requirements.

[17] 73 FR 2168 (Jan. 14, 2008).

[18] *See* 49 CFR 563.7, Table I.

[19] *See* 49 CFR 563.7, Table II. Examples of the ''if recorded'' data elements include lateral acceleration, longitudinal acceleration, stability control status, and frontal air bag suppression switch status.

[20] *See* 49 CFR 563.7, Table II. The ''frontal air bag deployment, time to nth stage'' data elements provide critical timing data for vehicles equipped with multi-stage air bags, which will help in assessing whether an air bag is deploying correctly during a crash (i.e., whether the sensors are functioning properly).

[21] *See* 49 CFR 563.8, Table III.

[22] Table I and Table II were most recently amended by the August 5, 2011 final rule responding to petitions for reconsideration. 76 FR 47478. Table III was most recently amended by the August 9, 2012 final rule responding to petitions for reconsideration 77 FR 47552.

[23] The term ''imaging'' refers to the process by which the agency retrieves data from an EDR. When imaging the data on an EDR, the original data set remains intact and unchanged in the memory banks of the EDR.

[24] *See* 49 CFR 563.12.

[25] *See* 49 CFR 563.10.

[26] *See* 49 CFR 571.208; Docket No. NHTSA–2006–26555–1, at 60.

A number of technical papers have been published on EDR accuracy in the crash test environment. Early studies focused on the full frontal barrier crash test environment where the reported EDR data was compared to instrumentation grade accelerometers mounted on the vehicle. Due to the limited availability of EDRs at that time, these studies were exclusively based on EDRs produced by General Motors. The studies reported a small amount of underestimation in the EDR delta-V reporting.[27]

More recent technical papers [28] have incorporated EDRs from other vehicle manufacturers, such as Ford and Toyota. They have also looked at a variety of impact scenarios including full frontal, offset frontal, side impact, and vehicle-to-vehicle angled tests. Better correlation between EDR and crash test delta-V were reported, particularly at higher impact speeds where more serious injuries occur. Accurate reporting of seat belt use and pre-crash data was also observed. The findings from these studies are generally consistent with the agency's experience to date; however, monitoring of EDR performance will continue as more vehicle manufacturers incorporate EDRs into the fleet. Furthermore, the agency continues to emphasize that EDRs provide one valuable piece of information, along with on-site evidence, needed to reconstruct crash events.

In March 2010, the agency began to obtain data from Toyota EDRs as part of its inquiry into allegations of unintended acceleration (UA), and as follow-up to the recalls of some Toyota models for sticking and entrapped accelerator pedals.[29] The agency conducted a thorough process of validating the accuracy of Toyota's EDR data and has high confidence in the accuracy of the data recovered.[30] In the NHTSA report [31] on the analysis and findings concerning UA in vehicles manufactured by Toyota, the validation efforts were described. The validation work was extensive and ultimately NHTSA established a high level of confidence in the veracity of pre-crash data recovered from Toyota's EDRs. Those data were found to be very valuable when considered in concert with the physical facts of a given incident.

When the agency received an allegation of UA or pedal entrapment, it interviewed the complainant and obtained permission for agency investigators to inspect the vehicle and, if it was EDR-equipped, attempted to download any data on the EDR.[32] NHTSA investigators also visited the location of the alleged incident to evaluate the complaint fully.[33] Complainants might state that while coming to an intersection, the vehicle suddenly accelerated without warning, resulting in a crash, or while driving on the highway, the vehicle continued to accelerate without the complainant's having stepped on the accelerator pedal and the brakes would not stop the vehicle.

Typically, EDRs store data specific to the dynamic state of the vehicle just prior to a crash, the performance of the air bag system in a crash, and a deceleration trace. The EDRs in Toyota vehicles examined by NHTSA captured vehicle speed, accelerator pedal voltage, brake light switch status, and engine revolutions per minute (rpm) at five, one-second intervals prior to a crash. A sixth and final interval of data was recorded at algorithm enable or when the EDR sensed an impact. While non-crash impacts such as curb and pothole strikes might enable an EDR algorithm and cause it to store data, aggressive throttle application or braking (without impact) would not enable the EDR.

For further information on the agency's field inspections of recent crashes alleging one or more forms of UA and the contribution of EDR data to the agency's investigations, please see *Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems, February 2011.*[34]

III. Proposal

A. Overview

1. Overall Plan for Reviewing and Upgrading EDR Requirements

Based on its experience with EDR data in the unintended acceleration studies and on the potential role of EDR data in investigations of future vehicles and technologies, the agency has been reviewing the requirements of Part 563 and assessing whether the applicability of the requirements should be expanded or the capabilities of EDRs should be increased. NHTSA plans on publishing an advance notice of proposed rulemaking in the near future to explore the potential for, and future utility of, capturing additional EDR data in light vehicles.

2. This Proposal

The agency proposes a new FMVSS, FMVSS No. 405, ''Event data recorders,'' which would mandate the installation of EDRs in most light vehicles manufactured on or after September 1, 2014. This proposal would also require that the vehicles meet the requirements for data elements, data format, and data capture contained in Part 563. Additionally, this proposal would require compliance with the crash test performance and survivability requirements in Part 563. This would mean that the data elements required by the regulation, with certain exceptions, must be recorded in the format specified by the regulation, exist at the completion of the crash test, and be retrievable by the methodology specified by the vehicle manufacturer. This proposal would also require manufacturers to comply with the requirements for such data retrieval tools listed in § 563.12. Finally, this

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[27] Chidester A.B., Hinch J., & Roston, T.A., ''Real World Experience with Event Data Recorders,'' 17th International Technical Conference on the Enhanced Safety of Vehicles, 2001.

Lawrence, J.M., Wilkinson, C.C., King, D.J., Heinrichs, B.E., & Siegmund, G.P., ''The Accuracy and Sensitivity of Event Data Recorders in Low-Speed Collisions,'' Society of Automotive Engineers, 2003.

Comeau, J.L., German, A., & Floyd, D., ''Comparison of Crash Pulse Data from Motor Vehicle Event Data Recorders and Laboratory Instrumentation,'' Canadian Multidisciplinary Road Safety Conference XIV, 2004.

[28] Niehoff, P., Gabler, H.C., Brophy, J., Chidester, C., Hinch, J., & Ragland C., ''Evaluation of Event Data Recorders in Full Systems Crash Tests,'' 19th International Technical Conference on the Enhanced Safety of Vehicles, 2005.

Gabler, H.C. & Hinch, J., ''Characterization of Advanced Air Bag Field Performance Using Event Data Recorders,'' 20th International Technical Conference on the Enhanced Safety of Vehicles, Paper 07–0349, 2007.

DaSilva, M., ''Engineering Analysis of EDR Data in NHTSA's NASS CDS Database,'' Presentation at the Society of Automotive Engineers Government/Industry Meeting, Washington, DC, 2007.

Gabler, H.C. & Hinch, J., ''Preliminary Evaluation of Advanced Air Bag Field Performance Using Event Data Recorders,'' DOT HS 811 015, August 2008.

Bare, C., Everest, B., Floyd, D., & Nunan, D., ''Analysis of Pre-Crash Data Transferred over the Serial Data Bus and Utilized by the SDM–DS Module,'' Society of Automotive Engineers, 2011.

[29] *See* for Pedal Entrapment: NHTSA Recall Nos. 06V–253, 07E–082, 09V–388, and 10V–023. *See* for Sticking Pedals: NHTSA Recall No. 10V–017.

[30] Event Data Recorder-Pre Crash Data Validation of Toyota Products. February 2011 (NHTSA–NVS–2011–ETC–SR07). *http://www.nhtsa.gov/staticfiles/nvs/pdf/NHTSA-Toyota_EDR_pre-crash_validation.pdf.*

[31] Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems, February 2011, page 43 (footnotes omitted). *http://www.nhtsa.gov/staticfiles/nvs/pdf/NHTSA–UA_report.pdf.*

[32] Not all of the vehicles for which the agency received consumer complaints were equipped with EDRs or had EDRs capable of capturing pre-crash data.

[33] The agency does not limit its follow-up investigations to consumers whose vehicles are equipped with EDRs.

[34] *See http://www.nhtsa.gov/UA* for the reports related to the agency's investigation into Toyota's electronic throttle system and unintended acceleration.

proposal would require that the owner's manual in each vehicle contain the statement regarding EDRs required by § 563.11.

A key priority of this NPRM is for the agency to require EDRs in light vehicles with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,595 kg or less, without disrupting the initiative and efforts of those manufacturers who already have voluntarily installed Part 563 compliant EDRs. Accordingly, we are not now proposing any modifications to Part 563 itself, e.g., not to any EDR data elements, data capture and format requirements, data retrieval specifications, or data survivability and crash test requirements. Likewise, we are not proposing revisions to the definitions section of Part 563.

The agency recognizes that that there have been advances in vehicle safety systems and the phase-in of new FMVSSs since the publication of the EDR final rule in 2006.[35] However, the issue of whether there should be any changes to the amount and type of information that EDRs must collect is not being considered in this rulemaking. Any significant revision to the substantive components of Part 563 is outside the scope of this NPRM.

B. Reasons To Mandate the Installation of EDRs

In the 2006 EDR final rule, the agency chose not to mandate installation of EDRs at that time for purposes of encouraging the voluntary development and installation of EDRs and alleviating costs on automobile manufacturers and consumers. Although we did not mandate EDRs in 2006, we stated that it was our intention that their use continue to expand.[36]

The agency explained further that the ''marketplace appears to be adopting EDRs and we do not currently see a need to mandate their installation.''[37] The agency gave the following reasons for reaching this conclusion:

> The challenge for NHTSA has been to devise an approach that would encourage broad application of EDR technologies in motor vehicles and maximize the usefulness of EDR data for the medical community, researchers, and regulators, without imposing unnecessary burdens or hampering future improvements to EDRs.
>
> * * * * *
>
> * * * We believe that the industry's voluntary development and installation of EDRs, combined with the standardization requirements in this rule, will be sufficient to meet the agency's and public's near term needs. * * *
>
> * * * [A]dopting a rule mandating EDR installation would result in an unnecessary cost for automobile manufacturers and consumers. Since less expensive vehicles are not equipped with a databus, a rule mandating EDR installation would require manufacturers to install a databus in those vehicles. * * *
>
> * * * * *
>
> * * * [W]e expect the extent of installation in new vehicles to continue increasing and to reach approximately 85 percent by model year 2010. * * * [T]he new vehicles lacking an EDR in that model year will be primarily those manufactured either in Germany or Korea. As Korea has expressed interest in the development of an EDR standard under the International Standards Organization, it appears that Korean built vehicles also might eventually be voluntarily equipped with EDRs.
>
> * * * We believe that the current level of EDR installation, combined with our standardization requirement, will yield data of statistical significance. * * *
>
> We will monitor future increases in the extent of installation of EDRs and revisit this issue if appropriate.[38]

Thus, the agency did not deem it necessary to propose to require the installation of EDRs, but remained open to considering this in the future. We are now revisiting that decision and the reasons given to support it. The agency has tentatively reached different conclusions about the issues it discussed in its 2004 and 2006 explanations of its decision not to seek to mandate EDRs.

Our first line of reasoning for an EDR mandate is driven by a need to fully cover light vehicles required to have frontal air bags (those with a GVWR of 3,855 kg or less and an unloaded vehicle weight of 2,595 kg or less) in order to improve vehicle safety and aid the agency in investigating potential safety defects. Although the percentage of light vehicles voluntarily equipped with EDRs has steadily increased as anticipated, EDRs remain absent from about 8 percent of the current production of all light vehicles regulated by Part 563. We believe that EDRs will remain absent from these vehicles without a regulation.

While it remains true that the current and expected levels of voluntary installation of EDRs may be sufficient to generate data for assessing performance of the general vehicle population to support future rulemaking, the agency notes that many of the vehicles without EDRs are high end vehicles and that advanced safety technologies, including advanced collision avoidance technologies, are typically first introduced on high end vehicles. Thus, it is particularly important to be able to obtain EDR data generated by the crash experience of these particular vehicles so that the agency has as much information about emerging advanced technologies as possible.

In its 2006 determination, the agency did not take into consideration the significant value that EDR data from a particular vehicle model can have, as subsequently shown in the recent Toyota unintended acceleration study, in aiding the agency in assessing the performance of that vehicle model in the course of a safety defect investigation. To serve this purpose, EDR data must be available for all applicable light vehicles.

Finally, the agency does not believe that a mandate whose practical effect would be to require the installation of EDRs would impose unnecessary burdens on less expensive vehicles or hamper future improvements to EDRs given that vehicle electronics on even the least expensive vehicles are much more sophisticated today than they were in 2004 and 2006.

C. Reasons To Place the Mandate in a Safety Standard

As noted above, we are proposing to establish a new FMVSS that requires each light vehicle having a GVWR of 3,855 kg or less and an unloaded weight of 2,495 kg or less to be equipped with an EDR capable of recording, at a minimum, the data elements specified in Table I of section 563.7. These vehicles would also need to meet the data capture and data format requirements for these elements. FMVSS No. 405 would further require that these vehicles meet the crash test performance and survivability requirements in section 563.10 with respect to the required data elements. This would have the effect of requiring that all required data elements in Part 563, except engine throttle, engine RPM, and service brake status, be retrievable for 10 days after the specified crash test. Section 563.10(c) also specifies the use of the data retrieval tool in section 563.12, and FMVSS No. 405 would make such a tool mandatory by incorporating the requirements of section 563.12. Finally, FMVSS No. 405 would require that the owner's manual in each vehicle contain the statement regarding EDRs required by section 563.11. Although by virtue of being equipped with an EDR, the vehicles affected by this rule would still need to meet all other applicable requirements of Part 563, the expanded enforcement

[35] FMVSS No. 214, ''Side impact protection,'' FMVSS No. 126, ''Electronic stability control,'' and FMVSS No. 226, ''Ejection mitigation,'' all have been updated since the publication in 2006 of the EDR final rule.

[36] 71 FR 50998 at 51010 (Aug. 28, 2006).

[37] Ibid at 51011 (Aug. 28, 2006).

[38] Ibid at 50999, 51010–11 (Aug. 28, 2006).

authority available for a FMVSS, described below, would only apply to requirements listed in FMVSS No. 405.

NHTSA recognizes that it previously expressed the view that the requirements for voluntarily-installed EDRs should be placed in a regulation instead of in a standard:

> Similar to our approach in the area of vehicle identification numbers, we decided to develop a general regulation for EDRs rather than a Federal motor vehicle safety standard. We did not believe it was appropriate to issue an FMVSS that would trigger the statute's recall and remedy provisions, because the benefits of EDRs are expected to be derivative from better crash-related information, rather than having a direct impact on the safety of the individual vehicle equipped with an EDR. A failure to meet the EDR requirements would, however, be subject to an enforcement action.[39]

We have reconsidered that position in light of subsequent experience and in the different context of this rulemaking, which seeks to mandate the installation of EDRs. Our experience in addressing unintended acceleration and pedal entrapment allegations demonstrated the value that EDR data can have for the safety of current as well as future motor vehicles. EDR data from a particular vehicle model already on the road can aid NHTSA and the model's manufacturer in their efforts to identify and address safety concerns associated with possible defects in the design or performance of those vehicles.

As to our 2006 statement about a failure to meet EDR requirements being subject to an enforcement action, we note that there is more than one form of enforcement action. Collecting penalties is one. Seeking an injunction is another. We had the latter type of enforcement action in mind when making that statement.

Placing the mandate in a FMVSS, instead of Part 563, would expand our access to the Safety Act's enforcement authority, enabling us to assess civil penalties for failure to provide an EDR or for failure to provide one that performs properly. We believe that being able to avail ourselves of this authority is necessary to ensure that all manufacturers install EDRs and that the agency has full and accurate EDR information. Such information can be vital to an agency investigation seeking to determine whether there is a safety defect in vehicles that are being driven by consumers on the road and to agency efforts to assess the performance of advanced safety technologies for possible future regulatory action. Not having an EDR or not recording such safety information has assumed even greater importance in the last several years and is far more consequential than a minor informational error, such as those involving the regulation on Vehicle Identification Numbers, for example.[40]

Failure to comply with a FMVSS would violate the prohibition in 49 U.S.C. 30112 against manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States any motor vehicle that does not comply with any applicable FMVSS. It would also subject them to the recall and remedy provisions of 49 U.S.C. 30118 and 30120. In turn, violations of that prohibition or the recall and remedy provisions would be subject the violator to civil penalties under 49 U.S.C. 30165(a)(1).

For the reasons stated above, we tentatively conclude that placing the requirements, including the EDR requirement itself, in a FMVSS is better than placing the requirements in Part 563. We acknowledge, however, that placing all of the requirements in Part 563 is an alternative to placing them in a FMVSS. We seek comment on the relative merits of placing the requirements in a FMVSS versus in Part 563. The agency requests comments on (1) which, if any, portions of Part 563 should be moved to the new FMVSS and which portions should remain in Part 563, and (2) whether some provisions should be set out in full in both or at least be set out in full in one and be incorporated by reference in the other. Should FMVSS No. 405 require that only some of the Table I elements be recorded? Should the requirements for the optional data elements listed in Table II not be incorporated into FMVSS No. 405? Would it be preferable to simply rebadge Part 563 in its entirety as FMVSS No. 405? What would be the potential problems with such an approach? How do manufacturers verify or plan to verify EDRs meet the recording requirements of Table I and II elements in Part 563?

Because EDRs, unlike other safety equipment, do not directly mitigate the risk or severity of a crash, the agency is considering how the recall and remedy provisions of the Safety Act would apply to noncompliance with the proposed FMVSS. The agency notes that 49 U.S.C. § 30118(d) authorizes the Secretary to exempt individual manufacturers from the recall and remedy provisions if the Secretary decides that a defect or noncompliance is inconsequential to motor vehicle safety.[41] The Secretary has delegated this exemption authority to NHTSA. NHTSA established 49 CFR Part 556, *Exemption for Inconsequential Defect or Noncompliance,* to implement the statutory provisions concerning these exemptions. The agency requests comment on what factors the agency should consider, if the proposed FMVSS is adopted, in determining whether an identified noncompliance is inconsequential. Should any noncompliance with the proposed FMVSS be subject to remedy and recall? Should recall and remedy be limited to noncompliance with certain requirements, such as noncompliance with the Table I data element requirements or the crash survivability requirements? Should noncompliance with the optional data element requirements be considered inconsequential?

D. Privacy Issues

The agency acknowledges that consumer privacy concerns persist regarding EDR data: Who owns it, who has access to it and under what circumstances, and what are the purposes for which it may be used. While these issues are of continued importance in the public discussion on the use of EDR technology, as an agency, we do not have the statutory authority to address many of these privacy issues because they are generally matters of State and Federal law that we do not administer. Currently, 13 states[42] have EDR laws to address vehicle owners' privacy and consumer concerns. Since 2006, more than a dozen other states have considered enacting similar legislation.

Within the limits of its authority, NHTSA has consistently sought to promote the recording of vital crash event information and to access and use that information in ways that safeguard privacy.

1. Agency Tailored EDR Performance Requirements To Minimize Data Gathering

Many of the public's concerns about EDRs appear to arise from

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[39] 71 FR 50998, 51040 (August 28, 2006).

[40] 49 CFR Part 565. The requirements of that regulation were originally placed in a FMVSS, but subsequently moved in stages into their current location.

[41] The agency notes that the granting of an inconsequentiality petition exempts a manufacturer from the remedy and recall provisions, but provides no exemption from civil penalties under 49 U.S.C. 30165 for violations of § 30112.

[42] The states include: Arkansas, California, Colorado, Connecticut, Maine, Nevada, New Hampshire, New York, North Dakota, Oregon, Texas, Virginia, and Washington.

misconceptions about how long and under what circumstances EDRs capture and permanently store data. Concerns raised in the past about EDRs and privacy arose from the misconceptions that EDRs record data for prolonged intervals and that they record personal information. We have sought, in developing and establishing the EDR requirements, to minimize the types of data recorded and the duration of any recording. We do not require the recording of data for prolonged intervals (i.e., several minutes) or audio/visual data that the public may associate with event data recorders in other modes of transportation. We believe that our objectives can be met by using a very brief snapshot of EDR data in the time period immediately surrounding a crash.

The EDR requirements we adopted standardize EDR data recording for an extremely short duration (i.e., a few seconds immediately before and during a crash). EDRs compliant with Part 563 requirements continuously record and seconds later erase data unless and until a frontal air bag or in some cases, a side air bag deploys. If no frontal or side air bag ever deploys, no data are ever permanently captured and stored.[43] Other types of events can result in storage of data that can be overwritten by subsequent events. Data are only required to be locked and cannot be overwritten when an air bag deploys in a crash event. When recordable events do occur, EDRs only capture data for a few seconds. EDRs do not record any personal information. They do not record either location identification information or any audio or video data.

2. Agency Seeks Vehicle Owner Permission To Access EDR data

NHTSA does not have any authority to establish legally binding rules regarding the ownership or use of a vehicle's EDR data.[44] Its authority to regulate safety performance of new vehicles, prohibit commercial entities from rendering federally required safety performance features inoperative and require the recalling and remedying of noncompliant vehicles and vehicles containing a safety related defect does not enable NHTSA to control who has access to the data, specify the circumstances in which access can be obtained, or regulate how those who obtain access to the data use it.

Nevertheless, the agency strives in its own actions relating to EDR requirements and data to avoid or at least minimize any impacts on privacy. NHTSA's longstanding policy has been to treat EDR data as the property of the vehicle owner. (Note, however, that complications may arise when ownership of the vehicle or EDR is transferred after a crash.) For this reason, before we attempt to obtain EDR data in a crash investigation, our first step is always to obtain the vehicle owner's consent. Once we obtain EDR data, we take measures to protect all personally identifiable information (e.g., the vehicle identification number (VIN) may be associated with the identity of the vehicle owner), and we assure the vehicle owner that all such information will be held confidential. In handling EDR and related personal information, the agency carefully complies with applicable provisions of the Privacy Act of 1974, the Freedom of Information Act, and other statutory requirements that limit the disclosure of personal information by Federal agencies.

3. Necessity of VIN Collection

Part 563 does not require the EDR in a motor vehicle to record that vehicle's VIN. However, for the reasons set forth in the next paragraph, when NHTSA collects the EDR data from a vehicle, the agency also separately collects the VIN of that vehicle. The following discussion explains why it is necessary for the agency to collect VIN in connection with EDRs, how the VIN is used by the agency, and the safeguards the agency takes related to avoid the release of the VIN.

Collecting the VIN is necessary to download and process the EDR data correctly. The commercial EDR download tools require a vehicle's VIN be inputted into the program in order to link the EDR data from that vehicle with parameters that ensure proper conversion of the data to a usable format. A partial VIN will not suffice for this purpose. The full VIN of a vehicle must be inputted into current EDR extraction tools as a key to ensure proper output and to account for running changes that may occur during a particular model year, thereby rendering it infeasible to use a shortened VIN.

4. Agency Protects VINs Needed To Download EDR Data

NHTSA takes care to protect the VINs that are collected along with EDR data. The VIN data identify the vehicle itself and do not provide name, address, or other personal identifier information regarding an individual. Further, EDR data alone cannot establish who was driving the vehicle at any given time (e.g., vehicle owner or other individuals (either with or without permission)).

Nevertheless, NHTSA has taken steps to prevent the release of any VIN because it can be used in various commercially-available programs to determine the identity of the current owner of a vehicle. As a practical matter, information contained in these records that has the potential of indirectly identifying individuals is not made public by the agency, except as specifically required by law. Further, prior to the release of information from databases containing EDR data (usually aggregated reports), the agency strips out the last six characters of the VIN (i.e., the portion that would allow identification of a specific vehicle and, potentially by indirect means, the identity of the vehicle's current owner).

5. Agency Uses and Stores EDR Data in Ways To Preserve Privacy

In using EDR data, the agency takes the EDR-generated information that it collects and incorporates the information into large crash-related databases in order to gain a more comprehensive understanding of certain crash events. The information contained in these databases is not retrieved or retrievable by name or other individual identifier.

In light of the above, we believe that the agency has taken adequate steps to ensure individual privacy vis-á-vis its use of EDR data. Additional information on EDRs may be found on the agency's Web site where we address a range of EDR issues. The Web site is accessible at *http://www.nhtsa.gov/EDR*. For more background information on privacy issues related to EDRs, please see the NPRM at 69 FR 32932 (June 14, 2004), the final rule at 71 FR 50998 (August 28, 2006), and amendments to the final rule and response to petitions for reconsideration at 73 FR 2168 (January 14, 2008) and 76 FR 47478 (August 5, 2011).

E. Lead Time

We are proposing an effective date of September 1, 2014. The agency estimates that approximately 92 percent of the light vehicle fleet is equipped with Part 563 compliant EDRs. The lead time we are proposing is sufficient to ensure that manufacturers of the remaining portion of the fleet that are not equipped with an EDR can redesign the data bus architecture, air bag control module, other electronic hardware and software calibration, conduct the requisite validation testing, and ensure that a tool that can retrieve the EDR data is commercially available. The proposed lead time should address the practical

[43] Side air bag deployments may result in permanent data capture under certain conditions.

[44] NHTSA did require a statement in owner's manuals disclosing the existence and discussing the purpose of an EDR.

concerns of small volume manufacturers and many new electric and hybrid electric manufacturers who are entering the market and who may not have been planning to install EDRs.

F. Benefits and Costs of This Proposal

Mandating the installation of EDRs in light vehicles required to have frontal air bags would provide for a standardized set of EDR data elements and formats throughout most of the light vehicle fleet rather than on just those manufacturers who chose to voluntarily install EDRs. This would expand and, therefore, potentially enhance the utilization of the recorded information and lead to further improvements in the safety of current and future motor vehicles.

Although the benefits of this NPRM derive from expansion of EDR coverage, we will briefly review the general benefits related to EDRs. EDR data improve crash investigation and crash data collection quality to assist safety researchers, vehicle manufacturers, and the agency to understand vehicle crashes better and more precisely.[45] While crash investigators gather insightful information about the dynamics of crashes, some of these parameters cannot be determined (such as anti-lock braking system or electronic stability control functioning status) or cannot be as accurately measured (such as the change in velocity) by traditional post-crash investigation procedures such as visually examining and evaluating physical evidence, e.g., the crash-involved vehicles and skid marks. Further, some vehicle crash dynamics related to rollover (such as roll angle, roll rate and normal acceleration) cannot be effectively estimated by crash investigators post-crash. Data collected by the EDR can provide a direct means for measuring these needed crash parameters.

Similarly, vehicle manufacturers are able to utilize EDRs in improving vehicle designs and developing more effective vehicle safety countermeasures. Additionally, many vehicle manufacturers are developing active safety systems (or crash avoidance systems) that assist drivers in reducing the likelihood of crash occurrence. EDR recorded pre-crash data (e.g., vehicle speed and engine throttle) could be used to further improve active safety systems and reduce crash involvement rates. Additionally, the data can be used to assess whether the vehicle was operating properly at the time of the event, or to help detect undesirable operations.

Currently, Advanced Automatic Crash Notification (AACN) systems may make use of some of the Part 563 required data elements such as change in velocity, air bag deployments, and safety belt status to aid emergency response teams in assessing the severity of a crash and estimating the probability of serious injury before they arrive at the scene of the crash.[46] Overall, we believe there are many safety-related benefits that would derive from requiring light vehicles to be equipped with EDRs.

In addition to the general benefits derived from EDR installation, there are benefits specific to this NPRM to mandate EDRs. As shown in the recent Toyota unintended acceleration studies, EDR data from a particular vehicle model can have significant value in aiding the agency in assessing the performance of that vehicle model and in determining the need for, or conducting, a safety defect investigation that may lead to a recall of the vehicle model for repair or replacement of problem parts or systems. To serve this purpose for all light vehicles required to have frontal air bags, EDR data must be available for those vehicles.

EDR data can also aid in the improvement in existing safety standards and the development of new ones. Many of the vehicles anticipated to continue to lack EDRs, absent a mandate, are high end vehicles that have advanced safety technologies, including advanced collision avoidance technologies. Such technologies are typically first introduced on high end vehicles. Thus, it is particularly important to be able to obtain EDR data generated by the crash experience of these particular vehicles.

The cost for an EDR is estimated to be $20 per vehicle. The estimated total incremental costs associated with this proposal would be $26.4 million (2010 dollars), which is measured from a baseline of 91.6 percent EDR installation to 100 percent installation, assuming the sale of 16.5 million light vehicles per year with a GVWR up to 4,536 kg. This cost reflects the need for technology improvements, as well as assembly costs, compliance costs, and paperwork maintenance costs for those 1.32 million vehicles with a GVWR of 3,855 kg or less that do not have EDRs. Technological improvements account for the majority of these costs.

IV. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impacts of this proposed rule under Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and the Department of Transportation's regulatory policies and procedures. This document was reviewed by the Office of Management and Budget under those orders. This document has been determined to be significant under the Department's regulatory policies and procedures. While the potential cost impacts of the proposed rule are far below the level that would make this an economically significant rulemaking, the rulemaking addresses a topic of substantial public interest.

The agency has prepared a separate document addressing the benefits and costs for the proposed rule. A copy is being placed in the docket.

As discussed in that document and in the preceding sections of this NPRM, the crash data that would be collected by EDRs under the proposed rule would be extremely valuable for the advancement of vehicle safety by enhancing and facilitating crash investigations, the evaluation of safety countermeasures, advanced restraint and safety countermeasure research and development, certain safety defect investigations, and AACN. The improvements in vehicle safety will occur indirectly from the collection of crash data by EDRs. Since the establishment of Part 563 in 2006, the agency has observed an increasing percentage of light vehicles utilizing EDR technology, and researchers, vehicle manufacturers, AACN and emergency medical service (EMS) providers, government agencies, and other members of the safety community are using the EDR data in ways that contribute to overall vehicle safety. EDR data can also have significant value in aiding the agency in assessing the performance of particular vehicle models in determining the need for, or conducting, a safety defect investigation that may lead to a recall of the vehicle for repair or replacement of problem parts or systems, as was made evident in the recent UA investigations involving Toyota vehicles, discussed earlier in this NPRM.

[45] Since the beginning of EDR data collection at NHTSA (late 1999 through January 2010), over 7,600 EDRs have been imaged through our various programs. The programs include: the National Automotive Sampling System Crashworthiness Data System (NASS–CDS), the National Motor Vehicle Crash Causation Study (NMVCCS), Special Crash Investigations (SCI) and Crash Injury Research and Engineering Network (CIREN).

[46] We note, however, that AACN systems do not require a vehicle to be equipped with an EDR.

We estimate that about 92 percent of new light vehicles are already equipped with EDRs. As discussed earlier, vehicle manufacturers have provided EDRs in their vehicles by adding EDR capability to their vehicles' air bag control systems. The costs of EDRs have been minimized, because they involve the capture into memory of data that is already being processed by the vehicle, and not the much higher costs of sensing much of that data in the first place.

The costs of the proposed rule would be the incremental costs for vehicles currently not equipped with EDRs to comply with the proposed EDR mandate and Part 563's requirements. We estimate the total annual costs of the proposed rule to be $26.4 million. While the potential costs include technology costs, paperwork maintenance costs,[47] and compliance costs, the paperwork maintenance and compliance costs are estimated to be negligible. The proposal would not require additional sensors to be installed in vehicles, and the major technology cost would result from a need to upgrade memory chips and hardware for housing the recorded data. The total cost for the estimated 1.2 million vehicles that do not have an EDR to comply with the proposed mandate and Part 563 requirements is estimated to be $26.4 million (2010 dollars). A complete discussion of how NHTSA arrived at these costs may be found in the separate document on benefits and costs.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). If adopted, the proposal would directly affect motor vehicle manufacturers, second stage or final manufacturers, and alterers. SIC code number 3711, Motor Vehicles and Passenger Car Bodies, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, Motor Vehicle Part and Accessories, prescribes a small business size standard of 750 or fewer employees.

Nine motor vehicle manufacturers affected by this proposal would qualify as a small business, as identified in the Preliminary Regulatory Evaluation.[48] Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. However, these small businesses adhere to original equipment manufacturers' instructions in manufacturing modified and altered vehicles. Based on our knowledge, original equipment manufacturers do not permit a final stage manufacturer or alterer to modify or alter sophisticated devices such as air bags or EDRs. Therefore, multistage manufacturers and alterers would be able to rely on the certification and information provided by the original equipment manufacturer. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). Because multiple States have enacted laws related to EDRs and may thus have a particular interest in this rulemaking, NHTSA has initiated efforts to consult with associations representing officials of those States[49] to obtain their views of the impact, if any, of this proposed rulemaking.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.[50] It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance. Thus, to the extent that aspects of EDR performance would be addressed by a safety standard, States would be expressly preempted by section 30103(b)(1) from adopting or maintaining any non-identical statute or regulation addressing those aspects of performance. With respect to this proposal, such aspects would include State EDR technical requirements requiring that EDRs record specific data elements, and/or requiring EDRs to meet specific technical performance or survivability requirements. Further, it is our view that any State laws or regulations that imposed, for the types of EDRs addressed by this proposal, additional disclosure requirements on vehicle manufacturers or dealers would likewise create a conflict and therefore be preempted. The disclosure requirements in Part 563, which we are proposing to incorporate into FMVSS No. 405, require a statement in the owner's manual to make the operator aware of the presence, function, and capabilities of the EDR. We believe that inconsistent or additional State disclosure requirements would frustrate the purposes of our regulation by potentially creating confusion or information overload, thereby reducing the benefit of the required statement.

In promulgating Part 563, the agency stated that it was our intent to provide one consistent set of requirements, including a specified statement in the owner's manual, for vehicles equipped with EDRs. In proposing to establish FMVSS No. 405, we continue to believe that this approach will enhance the quality of EDR data by standardizing the content, format, and accuracy of such data, thereby increasing its comparability and overall usefulness. We further believe that the standardized data will be of greater benefit for safety equipment analysis and crash reconstruction.

This proposed rule does not address certain other issues generally within the realm of State law, such as whether the vehicle owner owns the EDR data, how EDR data can be used/discovered in civil litigation, how EDR data may be used in criminal proceedings, whether EDR data may be obtained by the police without a warrant, whether EDR data may be developed into a driver-monitoring tool, and the nature and extent that private parties (including insurance companies, car rental companies, and automobile manufacturers) will have or may contract for access to EDR data.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.''[51] Pursuant to this provision, State common law tort causes of action against motor vehicle

[47] These paperwork maintenance costs consist of the costs to modify the owner's manual with the required statement specified in 49 CFR 563.11.

[48] The docket for this NPRM contains the Preliminary Regulatory Evaluation for FMVSS No. 405, Event Data Recorders (EDRs).

[49] The states include: Arkansas, California, Colorado, Connecticut, Maine, Nevada, New Hampshire, New York, North Dakota, Oregon, Texas, Virginia, and Washington.

[50] 49 U.S.C. 30103(b)(1).

[51] 49 U.S.C. 30103(e).

manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. The agency does not anticipate any State common law tort judgments concerning EDRs that could create any actual conflict. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Executive Order 12988 [52] *(Civil Justice Reform)*

This proposed rule would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the state's use. General principles of preemption law would apply, however, to displace any conflicting state law or regulations. If the proposed rule were made final, there would be no requirement for submission of a petition for reconsideration or other administrative proceedings before parties could file suit in court.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This proposal would mandate the installation of EDR devices in most light vehicles manufactured after September 1, 2014, and would require such vehicles to meet the EDR requirements contained in Part 563.

In compliance with the PRA, we announce that NHTSA is seeking comment on a new information collection.[53]

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Event Data Recorders.

Type of Request: New collection.

OMB Control Number: Not assigned.

Form Number: The collection of this information uses no standard form.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information:

NHTSA is proposing to create a new FMVSS in Part 571 that would require vehicle manufacturers to install EDRs in most light vehicles manufactured on or after September 1, 2014. The EDRs in those vehicles would be required by the new standard to meet the data elements, data capture and format, data retrieval, and data crash survivability requirements of Part 563, the existing regulation setting forth requirements for voluntarily-installed EDRs. This proposal would also require manufacturers to comply with the Part 563 requirements for ensuring the availability of EDR data retrieval tools and the requirement that the owner's manual in each vehicle contain a specified statement regarding EDRs.

Description of the Need for the Information and Use of the Information

The agency believes that requiring all light vehicles to be equipped with EDRs would help improve vehicle safety for consumers, while imposing relatively few costs on the automobile industry. EDR data are used to improve crash investigation and crash data collection quality to assist safety researchers, vehicle manufacturers, and the agency to understand vehicle crashes better and more precisely. Similarly, vehicle manufacturers are able to utilize EDRs in improving vehicle designs and developing more effective vehicle safety countermeasures, and EDR data may be used by AACN systems to aid emergency response teams in assessing the severity of a crash and estimating the probability of serious injury.

Additionally, the agency's experience in handling unintended acceleration and pedal entrapment allegations over the past year has demonstrated that if a vehicle is equipped with an EDR, the data from that EDR can improve the ability of both the agency and the vehicle's manufacturer to identify and address safety concerns associated with possible defects in the design or performance of the vehicle. Moreover, this proposal to mandate EDRs across the entire light vehicle fleet would contribute to advancements in the designs, particularly with respect to occupant restraints and other safety systems, of future vehicles.

Description of the Likely Respondents

The respondents are manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds). The agency estimates that there are approximately 30 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

There are no annual reporting or recordkeeping burdens associated with this proposed rule. Vehicle manufacturers are not required to retain or report information gathered by EDRs because the devices themselves continuously monitor vehicle systems and determine when to record, retain, and/or overwrite information. The information is collected automatically by electronic means. Data are only required to be locked and cannot be overwritten when an air bag deploys in a crash event. When recordable events do occur, EDRs only capture data for a few seconds.

[52] Executive Order 12988 (February 5, 1996).

[53] As noted earlier in the preamble, most manufacturers are already voluntarily installing compliant EDRs and are already voluntarily collecting the specified information. Nevertheless, because voluntary compliance with a paperwork requirement is regarded under the Paperwork Reduction Act as proposing to require a new collection of information, NHTSA must comply with the Act.

The costs to respondents are the costs of designing and equipping each covered vehicle with a compliant EDR. These costs include technology improvements, assembly costs, and paperwork maintenance costs.[54] Technology improvements account for the majority of these costs. Because the costs of EDRs under the PRA are those associated with the capture of data that is already being processed by the vehicle, the additional burden hours necessary to equip vehicles with EDR capability are minimal.

In determining the costs of this proposed rule under the PRA, we estimate that there are approximately 15.71 million applicable vehicles produced annually, 14.39 million of which are already voluntarily equipped with EDRs. The cost to install an EDR meeting the requirements of this proposed rule is $20 per vehicle if a vehicle does not have an EDR. The costs of this proposed rule under the PRA include the costs of installing compliant EDRs on all applicable vehicles, even those that are currently equipped with EDRs. Accordingly, the annual total costs of this proposed rule under the PRA would be $314.20 million.

We emphasize that the regulatory costs of the proposed rule would only be the incremental costs for the 1.32 million vehicles not currently equipped with EDRs to be equipped with an EDR meeting Part 563's requirements. As discussed above, we estimate the total annual regulatory costs of the proposed rule to be $26.4 million.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by February 11, 2013.

[54] These paperwork maintenance costs consist of the costs to modify the owner's manual with the required statement specified in 49 CFR 563.11. Because this statement is supplied by the agency to manufacturers for the purpose of public disclosure, it is not considered a collection of information for purposes of the Paperwork Reduction Act.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE) and the Institute of Electrical and Electronics Engineers (IEEE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are several consensus standards related to EDRs, most notably those standards published by SAE and IEEE. NHTSA carefully considered the consensus standards applicable to EDR data elements in establishing Part 563. Consensus standards for recording time/intervals, data sample rates, data retrieval, data reliability, data range, accuracy and precision, and EDR crash survivability were evaluated by NHTSA and adopted when practicable. This particular rulemaking, however, does not involve such matters. It is limited to establishing a mandate for certain light vehicles to be equipped with an EDR.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). In 2010 dollars, this threshold is $136 million.[55] Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

[55] Adjusting this amount by the implicit gross domestic product price deflator for the year 2010 results in $136 million (110.644/81.533 = 1.36).

If adopted, this proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposed rule would not result in costs in excess of $136 million (2010 dollars) annually to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. National Environmental Policy Act (NEPA)

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

I. Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA requests public comment on whether (a) the ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement have any implications for this rulemaking.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (the Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the

RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

V. Request for Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES.** Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[56]

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date. If a comment is received too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Appendix A Part 563 Tables

TABLE I—DATA ELEMENTS REQUIRED FOR ALL VEHICLES EQUIPPED WITH AN EDR

Data element	Recording interval/time[1] (relative to time zero)	Data sample rate (samples per second)
Delta-V, longitudinal	0 to 250 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	100
Maximum delta-V, longitudinal	0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time, maximum delta-V	0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Speed, vehicle indicated	−5.0 to 0 sec	2
Engine throttle, % full (or accelerator pedal, % full)	−5.0 to 0 sec	2
Service brake, on/off	−5.0 to 0 sec	2
Ignition cycle, crash	−1.0 sec	N/A
Ignition cycle, download	At time of download[3]	N/A
Safety belt status, driver	−1.0 sec	N/A
Frontal air bag warning lamp, on/off[2]	−1.0 sec	N/A
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, driver.	Event	N/A
Frontal air bag deployment, time to deploy, in the case of a single stage air bag, or time to first stage deployment, in the case of a multi-stage air bag, right front passenger.	Event	N/A
Multi-event, number of event	Event	N/A
Time from event 1 to 2	As needed	N/A
Complete file recorded (yes, no)	Following other data	N/A

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (e.g., T = −1 would need to occur between −1.1 and 0 seconds.)

[56] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[2] The frontal air bag warning lamp is the readiness indicator specified in S4.5.2 of FMVSS No. 208, and may also illuminate to indicate a malfunction in another part of the deployable restraint system.

[3] The ignition cycle at the time of download is not required to be recorded at the time of the crash, but shall be reported during the download process.

TABLE II—DATA ELEMENTS REQUIRED FOR VEHICLES UNDER SPECIFIED MINIMUM CONDITIONS

Data element name	Condition for requirement	Recording interval/time [1] (relative to time zero)	Data sample rate (per second)
Lateral acceleration	If recorded [2]	N/A	N/A
Longitudinal acceleration	If recorded	N/A	N/A
Normal acceleration	If recorded	N/A	N/A
Delta-V, lateral	If recorded	0–250 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	100
Maximum delta-V, lateral	If recorded	0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time maximum delta-V, lateral	If recorded	0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Time for maximum delta-V, resultant	If recorded	0–300 ms or 0 to End of Event Time plus 30 ms, whichever is shorter.	N/A
Engine rpm	If recorded	−5.0 to 0 sec	2
Vehicle roll angle	If recorded	−1.0 up to 5.0 sec [3]	10
ABS activity (engaged, non-engaged)	If recorded	−5.0 to 0 sec	2
Stability control (on, off, or engaged)	If recorded	−5.0 to 0 sec	2
Steering input	If recorded	−5.0 to 0 sec	2
Safety belt status, right front passenger (buckled, not buckled).	If recorded	−1.0 sec	N/A
Frontal air bag suppression switch status, right front passenger (on, off, or auto).	If recorded	−1.0 sec	N/A
Frontal air bag deployment, time to nth stage, driver [4].	If equipped with a driver's frontal air bag with a multi-stage inflator.	Event	N/A
Frontal air bag deployment, time to nth stage, right front passenger [4].	If equipped with a right front passenger's frontal air bag with a multi-stage inflator.	Event	N/A
Frontal air bag deployment, nth stage disposal, driver, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N/A
Frontal air bag deployment, nth stage disposal, right front passenger, Y/N (whether the nth stage deployment was for occupant restraint or propellant disposal purposes).	If recorded	Event	N/A
Side air bag deployment, time to deploy, driver.	If recorded	Event	N/A
Side air bag deployment, time to deploy, right front passenger.	If recorded	Event	N/A
Side curtain/tube air bag deployment, time to deploy, driver side.	If recorded	Event	N/A
Side curtain/tube air bag deployment, time to deploy, right side.	If recorded	Event	N/A
Pretensioner deployment, time to fire, driver.	If recorded	Event	N/A
Pretensioner deployment, time to fire, right front passenger.	If recorded	Event	N/A
Seat track position switch, foremost, status, driver.	If recorded	−1.0 sec	N/A
Seat track position switch, foremost, status, right front passenger.	If recorded	−1.0 sec	N/A
Occupant size classification, driver	If recorded	−1.0 sec	N/A
Occupant size classification, right front passenger.	If recorded	−1.0 sec	N/A
Occupant position classification, driver	If recorded	−1.0 sec	N/A
Occupant position classification, right front passenger.	If recorded	−1.0 sec	N/A

[1] Pre-crash data and crash data are asynchronous. The sample time accuracy requirement for pre-crash time is −0.1 to 1.0 sec (e.g. T = −1 would need to occur between −1.1 and 0 seconds.)

[2] "If recorded" means if the data is recorded in non-volatile memory for the purpose of subsequent downloading.

[3] "vehicle roll angle" may be recorded in any time duration; −1.0 sec to 5.0 sec is suggested.

[4] List this element n − 1 times, once for each stage of a multi-stage air bag system.

TABLE III—REPORTED DATA ELEMENT FORMAT

Data element	Minimum range	Accuracy [1]	Resolution
Lateral acceleration	At option of manufacturer	At option of manufacturer.	At option of manufacturer.
Longitudinal acceleration	At option of manufacturer	At option of manufacturer.	At option of manufacturer.
Normal Acceleration	At option of manufacturer	At option of manufacturer.	At option of manufacturer.
Longitudinal delta-V	−100 km/h to + 100 km/h	+/− 10%	1 km/h.
Lateral delta-V	−100 km/h to + 100 km/h	+/− 10%	1 km/h.
Maximum delta-V, longitudinal	−100 km/h to + 100 km/h	+/− 10%	1 km/h.
Maximum delta-V, lateral	−100 km/h to + 100 km/h	+/− 10%	1 km/h.
Time, maximum delta-V, longitudinal	0–300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	+/− 3 ms	2.5 ms.
Time, maximum delta-V, lateral	0–300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	+/− 3 ms	2.5 ms.
Time, maximum delta-V, resultant	0–300 ms, or 0—End of Event Time plus 30 ms, whichever is shorter.	+/− 3 ms	2.5 ms.
Vehicle Roll Angle	−1080 deg to + 1080 deg	+/− 10%	10 deg.
Speed, vehicle indicated	0 km/h to 200 km/h	+/− 1 km/h	1 km/h.
Engine throttle, percent full (accelerator pedal percent full).	0 to 100%	+/− 5%	1%.
Engine rpm	0 to 10,000 rpm	+/− 100 rpm	100 rpm.
Service brake	On or Off	N/A	On or Off.
ABS activity	On or Off	N/A	On or Off.
Stability control	On, Off, or Engaged	N/A	On, Off, or Engaged.
Steering input	−250 deg CW to + 250 deg CCW	+/− 5%	+/− 1%
Ignition cycle, crash	0 to 60,000	+/− 1 cycle	1 cycle.
Ignition cycle, download	0 to 60,000	+/− 1 cycle	1 cycle.
Safety belt status, driver	On or Off	N/A	On or Off.
Safety belt status, right front passenger	On or Off	N/A	On or Off.
Frontal air bag warning lamp	On or Off	N/A	On or Off.
Frontal air bag suppression switch status, right front passenger.	On, Off, or Auto	N/A	On, Off, or Auto.
Frontal air bag deployment, time to deploy/first stage, driver.	0 to 250 ms	+/− 2 ms	1 ms.
Frontal air bag deployment, time to deploy/first stage, right front passenger.	0 to 250 ms	+/− 2 ms	1 ms.
Frontal air bag deployment, time to nth stage, driver.	0 to 250 ms	+/− 2 ms	1 ms.
Frontal air bag deployment, time to nth stage, right front passenger.	0 to 250 ms	+/− 2 ms	1 ms.
Frontal air bag deployment, nth stage disposal, driver.	Yes or No	N/A	Yes or No.
Frontal air bag deployment, nth stage disposal, right front passenger.	Yes or No	N/A	Yes or No.
Side air bag deployment, time to deploy, driver.	0 to 250 ms	+/− 2 ms	1 ms.
Side air bag deployment, time to deploy, right front passenger.	0 to 250 ms	+/− 2 ms	1 ms.
Side curtain/tube air bag deployment, time to deploy, driver side.	0 to 250 ms	+/− 2 ms	1 ms.
Side curtain/tube air bag deployment, time to deploy, right side.	0 to 250 ms	+/− 2 ms	1 ms.
Pretensioner deployment, time to fire, driver	0 to 250 ms	+/− 2 ms	1 ms.
Pretensioner deployment, time to fire, right front passenger.	0 to 250 ms	+/− 2 ms	1 ms.
Seat track position switch, foremost, status, driver.	Yes or No	N/A	Yes or No.
Seat track position switch, foremost, status, right front passenger.	Yes or No	N/A	Yes or No.
Occupant size classification, driver	5th percentile female or larger	N/A	Yes or No.
Occupant size classification, right front passenger.	Child	N/A	Yes or No.
Occupant position classification, driver	Out of position	N/A	Yes or No.
Occupant position classification, right front passenger.	Out of position	N/A	Yes or No.
Multi-event, number of event	1 or 2	N/A	1 or 2.
Time from event 1 to 2	0 to 5.0 sec	0.1 sec	0.1 sec.
Complete file recorded	Yes or No	N/A	Yes or No.

[1] Accuracy requirement only applies within the range of the physical sensor. For vehicles manufactured after September 1, 2014, if measurements captured by a sensor exceed the design range of the sensor, the reported element must indicate when the measurement first exceeded the design range of the sensor.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Regulatory Text

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation of part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

2. Add § 571.405 to subpart B to read as follows:

§ 571.405 Standard No. 405; Event data recorders.

S1. *Purpose and scope.* This standard specifies requirements for equipping motor vehicles with event data recorders (EDRs) and for the post-crash survivability and retrievability of onboard motor vehicle crash event data to help ensure that EDRs record, in a readily usable manner, data valuable for effective crash investigations and for analysis of safety equipment performance (e.g., advanced restraint systems). These data will help provide a better understanding of the circumstances in which crashes and injuries occur. That understanding will aid efforts to assess and address safety problems in motor vehicles currently on the road and to develop requirements for safer motor vehicles in the future.

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a GVWR of 3,855 kg (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, and that are manufactured on or after September 1, 2014, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.

S3. *Definitions.*

Event data recorder (EDR) means a device or function in a vehicle that records the vehicle's dynamic time-series data during the time period just prior to a crash event (e.g., vehicle speed vs. time) or during a crash event (e.g., delta-V vs. time), intended for retrieval after the crash event. For the purposes of this definition, the event data do not include audio and video data.

S4. *Requirements.* Each vehicle shall be equipped with an event data recorder and meet the requirements of § 563.7 of this chapter for data elements, § 563.8 of this chapter for data format, § 563.9 of this chapter for data capture, § 563.10 of this chapter for crash test performance and survivability, and § 563.11 of this chapter for information in owner's manual. Each manufacturer of a motor vehicle equipped with an EDR shall comply with the requirements of § 563.12 of this chapter for data retrieval tools.

Issued on: December 7, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–30082 Filed 12–10–12; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121128658–2658–01]

RIN 0648–BC72

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes changing the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap in Framework Adjustment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan,. This action also proposes reducing the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,500 mt to 3,915 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. The adjustment will maintain the intended function of the butterfish mortality cap by continuing to limit butterfish discards in the longfin squid fishery while accommodating a potential directed butterfish fishery during the 2013 fishing year.

DATES: Public comments must be received on January 14, 2013.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Framework Document, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Framework Adjustment 7, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The Framework Document is also accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments on this document, identified by NOAA–NMFS–2012–0239, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0239*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MSB Framework Adjustment 7.''
- *Fax:* (978) 281–9135, Attn: Aja Szumylo.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978–281–9195, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The butterfish mortality cap on the longfin squid fishery was implemented on January 1, 2011, as part of Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (75 FR 11441, March 11, 2010) as a means of reducing fishing mortality to the butterfish stock. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality. The cap currently limits butterfish catch (both landings and discards) on directed longfin squid trips. The mortality cap accounts for fishery behavior in which most butterfish caught on a longfin squid trip is discarded and only a small amount of butterfish is landed, which has been the case since 2002. However, in response to new information that suggests increased butterfish abundance, the Council has recommended a much higher butterfish quota for the 2013 fishing year, and the increased quota would allow for a directed butterfish fishery for the first time in recent years.

The butterfish mortality cap is currently calculated by extrapolating observed butterfish catch (landings and discards) on longfin squid trips with an observer aboard over all unobserved longfin squid trips. All trips that land at least 2,501 lb (1.13 mt) of longfin squid are considered in the calculations for the butterfish mortality cap. With directed butterfish fishing, an observed trip could land a very large amount of butterfish and just enough longfin squid to still be classified as a butterfish mortality cap trip. This means that the cap estimation would include a number of trips that are not truly targeting longfin squid. The most effective way to address this without reclassifying what constitutes a longfin squid trip (i.e., changing the 2,501-lb (1.13-mt) threshold) is to account for only discards of butterfish when determining how much butterfish on that trip should count against the mortality cap. To do this, the observed rate of butterfish catch (observed butterfish catch/kept all on observed squid trips) would be changed to the observed rate of butterfish discards (observed butterfish discards/kept all on observed trips), where ''kept all'' is the retained catch of all species on the trip.

Thus, Framework Adjustment 7 proposes to change the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap. If the Council specifies a butterfish quota that does not accommodate a directed fishery in future fishing years, the butterfish mortality cap can be reverted to a catch cap as part of the specifications process.

This action would also reduce the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,500 mt to 3,915 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. This reduction is based on year-end butterfish mortality cap analyses for the 2011 fishing year, in which 13 percent of butterfish catch in the cap was retained and 87 percent of butterfish catch in the cap was discarded. Although the total butterfish mortality allocation will decrease, the adjusted cap level is expected to maintain overall butterfish mortality in the longfin squid fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As outlined in the preamble to this proposed rule, Framework Adjustment 7 proposes to change the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap, and adjusts the 2013 cap allocation to account for this change. The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of Framework Adjustment 7 in the Framework Document (see **ADDRESSES**), and determined that this rule will not have a significant economic impact on a substantial number of number entities. While Framework Adjustment 7 adjusts the butterfish mortality cap on the longfin squid fishery by changing what portion of butterfish mortality counts towards the cap, and adjusts the butterfish mortality cap level for the 2013 fishing year to account for the change in the cap accounting, the action does not establish annual catch limits for butterfish or change the annual allocation for any of the MSB species. This action simply means that the cap no longer limits butterfish landings on longfin squid trips.

Assuming that a directed butterfish fishery is allowed, that there is a market for butterfish, and that vessels targeting squid will continue to do so as they have in past years (i.e. the nature of a directed longfin squid trip does not change), Framework Adjustment 7 will have no impact on which vessels catch butterfish, or what and what the overall profit from butterfish will be for these vessels. Under the existing butterfish mortality cap (i.e. a butterfish mortality cap that takes into account both landings and discards), a vessel targeting longfin squid that catches butterfish incidentally will land butterfish if there is some profit to be made from the butterfish landings. The same would occur under Framework Adjustment 7, where only the butterfish mortality cap only takes into account discards. If butterfish landings occur while a vessel is targeting longfin squid, the vessel will likely land that butterfish if there is some profit to be made from the butterfish landings.

The economic impacts of the total level of both butterfish landings and discards for the 2013 fishing year is unchanged by Framework Adjustment 7, and has already been analyzed in the 2013 MSB specifications. Further, the body of permit holders that has the potential to directly target butterfish is unchanged by Framework Adjustment 7 alone. Under both the status quo butterfish mortality cap and the discard only mortality cap, the total level of butterfish landings will be limited by the previously analyzed butterfish quota. The total allowed level of butterfish discards in the longfin squid fishery is capped through the butterfish mortality cap on the longfin squid fishery. Finally, the effects of a potential closure of the longfin squid fishery based on exceeding the butterfish mortality cap is analyzed in MSB Amendment 10, and the effects of the specific cap level set for 2013 is analyzed in 2013 MSB specifications. Thus, there are no economic impacts to evaluate. This action is only designed to maintain the effective control of butterfish mortality established in Amendment 10 and the annual specifications for the butterfish mortality cap.

The Council-conducted analyses identified 375 unique fishing entities with limited access butterfish/longfin squid permits, all of which were determined to be small entities. However, given the minor change implemented by the proposed measure, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities, given the aforementioned adjustment to the butterfish mortality cap on the longfin squid fishery process proposed in Framework Adjustment 7. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. RFA analysis will be conducted, as appropriate, for subsequent actions that establish catch limits for butterfish.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 2012.

Alan Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–30119 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–BA82

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 41 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) to NMFS for review. If approved, Amendment 41 would amend the Bering Sea and Aleutian Islands Crab Rationalization Program (CR program) by establishing a process for eligible harvesters, processors, and affected communities to request an exemption from regional delivery requirements. Federal regulations require that crab harvested with regionally designated individual fishing quota (IFQ) be landed within the designated region; likewise, crab purchased with regionally designated individual processing quota (IPQ) must be processed within the designated region. Natural and man-made situations can disrupt fishing and processing activity making regional delivery requirements untenable in some seasons. Amendment 41 is necessary to prevent disruption to the CR Program fisheries, while providing for the sustained participation of the communities intended to benefit from the regional delivery requirements. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before February 11, 2013.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0032, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0147 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 41, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis, the categorical exclusion prepared for this action, and the Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Analysis prepared for the CR Program may be obtained from the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries.htm.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 41 to the FMP is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Amendments 18 and 19 amended the FMP to include the CR Program. Regulations implementing these amendments were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder's annual allocation, called IFQ, is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Ninety percent of the remaining IFQ is issued as Class A IFQ and 10 percent is issued as Class B IFQ.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder's annual allocation is called IPQ. NMFS issues IPQ at a one-to-one correlation between the amount of IPQ and Class A IFQ issued for a given CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ and Class B IFQ may be delivered to any registered crab receiver.

The CR Program established regional delivery requirements to preserve the historic geographic distribution of deliveries in the crab fisheries. NMFS assigned a regional designation to QS and PQS for seven of the nine CR Program fisheries. The regional delivery requirements are structured so that crab harvested with regionally designated IFQ must be delivered to a processor with matching regionally designated IPQ and processed in the designated region. These regional delivery requirements are intended to ensure that coastal communities historically active as crab processing ports continue to receive economic benefits from crab deliveries and to encourage the development of shorebased processing capacity in specific isolated communities.

The Council adopted Amendment 41 to the FMP at its December 2010 meeting. Amendment 41 allows IFQ holders, IPQ holders, and communities to request and receive from NMFS an exemption to regional delivery requirements. Amendment 41 would apply to QS and PQS that has a regional designation for the North Region or South Region. NMFS assigned a North Region designation or a South Region designation to the QS and PQS in six CR Program fisheries: Bristol Bay red king crab, Bering Sea snow crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Saint Matthew Island blue king crab, and Pribilof Islands red and blue king crab. The North Region is north of 54°20′ N. latitude. The South Region is south of 54°20′ N. latitude.

NMFS also assigned a West Region designation to a portion of the Western Aleutian Islands golden king crab QS and PQS; the remaining QS and PQS in that fishery is undesignated and may be delivered without regional limitation. Eastern Bering Sea Tanner crab QS and PQS, and Western Bering Sea Tanner crab fishery QS and PQS, do not have a regional designation. Amendment 41 would not apply to QS and PQS issues for these fisheries.

In recommending Amendment 41, the Council recognized that weather conditions or other natural or man-made circumstances can hinder harvesting activities and restrict access to processing facilities in the North or South Region. Natural or man-made catastrophes could result in lost revenue to harvesters, processors, and communities. Safety risks increase when harvesters attempt to meet regional delivery requirements in inclement weather (e.g., icing conditions) and other potentially unsafe situations. Unforeseen delays in delivering crab could result in deadloss (crab that die before being processed). Harvesters may avoid or delay the harvest of regionally designated IFQ, thereby increasing the potential for unharvested crab or crab harvested later in the fishing season than would have been otherwise required for a given TAC level. Such changes in fishing behavior could result in unused IPQ, increased processing cost, loss of market share, and loss of revenue to remote communities dependent on revenues from crab deliveries and processing.

The Council recognized that the purpose of prohibiting holders of regionally designated Class A IFQ and IPQ from delivering and processing crab outside of the designated region ensures that each region retains the economic benefits from deliveries within the region. Therefore, under Amendment 41, deliveries of regionally designated Class A IFQ outside of the region would need to be negotiated among IFQ holders, IPQ holders, and representatives of affected communities. The Council also recognized that any exemption must include requirements for IFQ holders and IPQ holders to make efforts to avoid the need for an exemption and to limit the amount of IFQ and IPQ subject to the exemption. The Council recommendation supports the existing regional delivery requirements while establishing a process to mitigate disruptions in a CR Program fishery that would restrict the ability of participants to meet the delivery requirements.

The Council also recognized the potential for insurmountable administrative difficulties if NMFS specified the conditions for granting an exemption and then determined whether those conditions existed in a particular situation. Therefore, the Council recommended a system of civil contracts between harvesters, processors, and community representatives as the means of establishing the exemption from the regional delivery requirements.

Under Amendment 41, the parties—Class A IFQ holders, IPQ holders, and affected communities—would develop private contractual arrangements that specify when, and under what terms, they could request and receive an exemption from NMFS. The contract terms would not be established in the FMP or in regulation. The parties would enter into two private contractual arrangements—a framework agreement and an exemption contract—before the specified IFQ and IPQ would be exempt from the regional delivery requirements. These contracts would govern the roles and responsibilities of the parties to the contract and would establish each party's specific obligations. The goal is that, through the framework agreement process, the parties would plan for adverse conditions and would agree to take steps to reduce the need for an exemption. Then, in the event that the mitigation was unsuccessful in averting the need for an exemption, the parties would agree to an exemption contract and jointly apply to NMFS for an exemption from the regional delivery requirement. If any party to a framework agreement or exemption contract believes that any other party did not comply with their contractual obligation, that party could seek redress as a private civil matter.

Amendment 41 does not prescribe specific conditions or terms of agreement for the framework agreement or exemption contract. Section 2.4.2 of the analysis provides background about the range of private arrangements that the Council considered and that the parties might put in the framework agreement and the exemption contract. In negotiating the framework agreement, the Council expects that the parties would consider mechanisms and operating practices that would limit the need to seek an exemption from the regional delivery requirements. The Council anticipates that the framework agreement would define the steps that the parties would take prior to the crab fishing season to avoid seeking an exemption during the fishery. A framework agreement could include an agreement among IFQ holders, whereby they aggregate a certain percentage of their IFQ to address inseason factors that could otherwise prevent compliance with regional delivery requirements. For example, the framework agreement could prioritize the harvest of North Region Class A IFQ while setting aside a portion of South Region Class A IFQ until the North Region Class A IFQ has been harvested and delivered to matching North Region IPQ. The Council anticipates that the framework agreement would also address the circumstances that would trigger requesting an exemption. If those circumstances occurred, the Council anticipates that the framework agreement would describe the steps that the parties would take to mitigate the adverse effects of the exemption on the affected community. The framework agreement might include steps to compensate the community that was losing the processing, the economic activity from the processing, and the tax revenues from the processing.

The CR Program also limits the amount of PQS and IPQ that may be owned or used by an individual. Under Amendment 41, NMFS would suspend the requirement that any IPQ used at a facility through a custom processing arrangement accrue against the IPQ use cap of the owners of that facility for all Class A IFQ and IPQ included in the exemption. IPQ holders will continue to be subject to the IPQ use cap for other crab processing that does not occur through an exemption from the regional delivery requirements.

NMFS is soliciting public comments on proposed Amendment 41 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 41, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. All comments received by the end of the comment period on Amendment 41, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 41. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 41. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–30099 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 240
Thursday, December 13, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 2012.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by January 14, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Export Certificate Request Forms.

OMB Control Number: 0581–NEW.

Summary of Collection: The Agricultural Marketing Service, Dairy Grading Branch, dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. International markets are increasing for U.S. dairy products. Forms will provide a format for exporters to provide information to the Dairy Grading Branch on consignments they wish to export so that the Dairy Grading Branch can issue the proper health certificate with the information required by the importing country.

Need and Use of the Information: Importing countries are requiring certification as to production methods and sources of raw ingredients for dairy products. The information required on the sanitary certificates varies from country to country requiring specific forms for each country. Such information includes, but not limited to, identity of the importer and exporter; consignment specifics and border entry point at the country of destination. Information gathered from the applicants is transferred to the proper health certificate, certified by the proper authority and returned to the exporter. The collection of the information on the forms is necessary for the Dairy Grading Branch to be able to properly complete the required export certificate.

Description of Respondents: Business or other for-profit.

Number of Respondents: 250.

Frequency of Responses: Reporting: Each time a product is exported.

Total Burden Hours: 4,129.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–30108 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within January 14, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Information Officer

Title: Information Collection Request; Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants and Awardees.

OMB Control Number: 0505–0025.

Summary of Collection: Abstract: The Department of Agriculture (USDA) agencies and staff offices (except Forest Service) must comply with the restrictions set forth in sections 738 and 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Pub. L. 112–55, as amended and/or subsequently enacted), which prevents agencies from doing business with corporations that (1) have been convicted, or had an officer or agent of such corporation acting on behalf of the corporation convicted, of a felony criminal violation under any Federal or State law within the preceding 24 months, and/or (2) have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; unless the agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment are not necessary to protect the interests of the Government.

The Forest Service must comply with similar restrictions in sections 433 and 434 of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74, as amended and/or subsequently enacted). The Forest Service restrictions on doing business are almost identical to the restrictions for other USDA offices and agencies; the one difference is that the Forest Service restrictions are concerned only with felony convictions under Federal law, rather than both Federal and State law.

Need and Use of the Information: To comply with the appropriations restrictions, the proposed information collection will require corporate applicants and awardees for USDA and Forest Service programs to represent accurately whether they do or do not have any qualifying convictions or tax delinquencies which would prevent USDA or the Forest Service from entering into a proposed business transaction with the corporate applicant. For non-procurement programs and transactions, these representations will be submitted on the proposed information collection forms AD–3030, AD 3031, AD–3030–FS and AD–3031–FS. The categories of non-procurement transactions covered by the information collection are: Non-procurement contracts, grants, loans, loan guarantees, cooperative agreements, and some memoranda of agreement. For procurement transactions, compliance with the appropriations restrictions has been effected through the issuance of Agricultural Acquisition Regulation Advisory Number 104, issued March 29, 2012 and available here: *http://www.dm.usda.gov/procurement/policy/advisories.htm.* Accordingly, the information collection is not intended for use with USDA or Forest Service procurement transactions. This information collection, deals only with USDA and Forest Service non-procurement transactions. For more specific information about whether a particular non-procurement program or transaction is included in this list please contact the USDA agency or staff office or Forest Service office responsible for the program or transaction in question.

The AD–3030 and AD–3030–FS forms will effectuate compliance with the appropriations restrictions by requiring all corporate applicants to represent at the time of application for a non-procurement program whether they have any felony convictions or tax delinquencies that would prevent USDA or the Forest Service from doing business with them. Corporations include, but are not limited to, any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, or the various territories of the United States. Corporations include both for profit and non-profit entities. The AD–3031 and AD–3031–FS require an affirmative representation that corporate awardees for non-procurement transactions do not have any felony convictions or tax delinquencies. The AD 3030/3030–FS are required at the time of application and the AD 3031/3031–FS are required at the time of award. If the application and award process are a single step, the agency or staff office may require both forms to be filed at the same time. Collection of this information is necessary to ensure USDA agencies and staff offices and Forest Service comply with the appropriations restrictions prohibiting the Government from doing business with corporations with felony convictions and/or tax delinquencies.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 15 minutes per response.

Frequency of Collection: Other: Corporations—AD–3030/3030–FS—each time they apply to participate in a multitude of USDA non-procurement programs; Awardees—AD–3031/3031–FS—each time they receive an award in USDA non-procurement programs.

Respondents: Corporate applicants and awardees for USDA non-procurement programs, including grants, cooperative agreements, loans, loan guarantees, some memoranda of understanding, and non-procurement contracts.

Estimated Number of Annual Respondents: 741,644.

Estimated Number of Responses per Respondent: 1.75.

Estimated Total Annual Responses: 2,255,922.

Estimated Total Annual Burden Hours on Respondents: 563,980.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–30110 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0095]

Notice of Request for Extension of Approval of an Information Collection; Submission of Itineraries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the submission of itineraries by exhibitors under the Animal Welfare Act regulations.

DATES: We will consider all comments that we receive on or before February 11, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0095-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0095, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0095* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the submission of itineraries, contact Dr. Barbara Kohn, Senior Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1236; (301) 851–3751. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Animal Care; Submission of Itineraries.

OMB Number: 0579–0361.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate rules and standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Animal and Plant Health Inspection Service (APHIS).

Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3. The regulations in 9 CFR part 2 establish certain responsibilities of regulated persons under the AWA. These responsibilities include requirements for the licensing and registration of dealers, exhibitors, and research facilities, standards for veterinary care, identification of animals, and recordkeeping. APHIS requires licensees or registrants who intend to exhibit animals away from their approved sites to submit itineraries in accordance with § 2.126 of the regulations.

On October 1, 2009 (74 FR 50738–50740, Docket No. APHIS–2006–0023), APHIS proposed to amend § 2.126 to require that any exhibitor who is subject to the AWA regulations (including, but not limited to, circuses, traveling educational exhibits, animal acts, and petting zoos), and who intends to exhibit any animal at any location other than the person's approved site, must submit a written itinerary to the Animal Care (AC) Regional Director. Under the proposed rule, the AC Regional Director would have to receive the itinerary by email or facsimile no fewer than 2 days in advance of any travel and must include the following:

- The name of the person who intends to exhibit the animal and transport the animal for exhibition purposes, including any business name and current AWA license or registration number and, in the event that any animal is leased, borrowed, loaned, or under some similar arrangement, the name of the person who owns such animal;
- The name, identification number or identifying characteristics, species (common or scientific name), sex, and age of each animal; and
- The names, dates, and locations (with addresses), where the animals will travel, be housed, and be exhibited, including all anticipated dates and locations (with addresses) for any stops and layovers.

These information collection activities were provided initial approval by the Office of Management and Budget (OMB) under control number 0579–0361.

APHIS received comments on the proposed itinerary requirements and will be addressing those comments and any possible changes to the requirements, based on those comments, in the final rule. However, the initial approval for this information collection will expire on February 28, 2013.

We are asking OMB to extend approval of the submission of itineraries for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Exhibitors.

Estimated Annual Number of Respondents: 300.

Estimated Annual Number of Responses per Respondent: 8.66.

Estimated Annual Number of Responses: 2,600.

Estimated Total Annual Burden on Respondents: 650 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of December 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–30130 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Report of Acreage, Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are seeking comments from all interested individuals and organizations on a revision of a currently approved information collection associated with the report of acreage for the Noninsured Crop Disaster Assistance Program (NAP). The Report of Acreage form is being revised for more efficient data entry in Modernize and Innovate the Delivery of Agricultural Systems (MIDAS). The producer will also no longer be required to provide certain additional information with the form that will likely result in a reduction in the burden hours in this information collection. This information collection is needed to administer the program.

DATES: We will consider comments that we receive by February 11, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

• *Mail:* USDA Farm Service Agency, Farm Programs, Production Emergencies and Compliance Division, CPS, ATTN: Jantrice Williams, 1400 Independence Avenue SW., STOP 0517, Washington, DC 20250–0523.

Also, send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jantrice Williams, (202) 720–3637.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Report of Acreage for the Noninsured Crop Disaster Assistance Program (NAP).

OMB Control Number: 0560–0004.

Expiration Date: March 31, 2015.

Type of Request: Revision.

Abstract: NAP provides financial assistance to producers who have suffered a production loss of an eligible crop or were prevented from planting an eligible crop as a result of natural disasters. Eligible crops are commercial crops or other agricultural commodities for which catastrophic risk protection under 7 U.S.C. 1508(b) is not available and that are produced for food or fiber.

Additionally, eligible crops also include floriculture, non-ornamental nursery, ornamental nursery, ginseng, mushroom, honey, maple sap, seaoats, seagrass, industrial crops, Christmas tree crops, turfgrass sod, seed crops, and aquaculture (including ornamental fish). Specific information is collected from producers on identification of the crop (including type and variety), practices, intended uses, planting patterns, and predominant species of forage vegetation (including intended method of harvest, that is mechanically harvested or grazed); dates crops were planted or planting was completed (including age of perennial crops); number of acres of each planting of the eligible crop in which the producer has a share in the administrative county; number of acres intended but prevented from being planted; shares and identities of all producers sharing in the crop at the time a NAP application for coverage was filed; FSA farm serial number or location of commodities not necessarily associated with an FSA farm serial number such as colonies of bees for honey production (including the number of bee colonies belonging to the unit); aquaculture production (including the name, type, or variety of each aquaculture species in a physical location of acreage on which the facility resides such as ponds and waterbeds); ornamental nursery (including the size and origin, that is container or field grown, of plants belonging to the unit); mushroom facilities; turfgrass sod (including the average number of square yards per acre and all unharvested acres); and trees for maple sap production (including number of eligible trees, average size and age of producing trees, and total number of taps placed or anticipated for the tapping season). NAP operates under the regulations in 7 CFR part 1437.

The ''Modernize and Innovate the Delivery of Agricultural Systems'' (MIDAS) is FSA's initiative to improve the delivery of FSA farm program benefits and services through the re-engineering of farm program business processes and the adoption of enhanced and modernized information technology. FSA is not collecting any new information on the FSA–578. However, the Report of Acreage form is being revised for more efficient data entry in MIDAS. Producers will no longer be required to provide certain additional information with the form that will reduce the burden hours in this information collection. The producers will only need to report to one county office instead of each administrative county office due to MIDAS. Therefore, FSA expects a reduction in the annual total burden hours for collection of the information.

Respondents: Producers.

Estimated of Respondent Burden: Public reporting burden for this collection of information is estimated to average 30 minutes (0.50 hour) per response. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Estimated Annual Number of Respondents: 291,500.

Estimated Annual Number of Forms per Person: 1.5.

Estimated Annual Responses on Respondents: 437,250.

Estimate of Total Annual Burden Hours: 510,125.

We are requesting comments on all aspects of this information collection to help us to:

(1) Determine whether the continued collection of information is still necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Assess the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for the Office of Management and Budget approval.

Signed on November 1, 2012.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2012–30019 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection Request: Highly Erodible Land Conservation and Wetland Conservation

AGENCIES: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension of a currently approved information collection associated with Highly Erodible Land Conservation and Wetland Conservation certification requirements. This information is collected in support of the conservation compliance provisions of Title XII of the Food Security Act of 1985 (the 1985 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

DATES: We will consider comments that we receive by February 11, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Daniel McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, (202) 720–3463.

SUPPLEMENTARY INFORMATION:

Title: Highly Erodible Land Conservation and Wetland Conservation Certification.

OMB Control Number: 0560–0185.

Expiration Date of Approval: June 30, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The collection of this information is necessary to determine payment eligibility of individuals and entities for various programs administered by the USDA, including Conservation Programs, Price Support Programs, Direct and Counter Cyclical Programs, including the Average Crop Revenue Election Program, Aquaculture and Livestock Grant Programs, Crop and Livestock Energy Programs, USDA Revenue Programs, Wildlife Programs, Noninsured Crop Disaster Assistance Program, Disaster Programs and Farm Loan Programs. Regulations governing the requirements under Title XII of the Food Security Act of 1985 (16 U.S.C. 3801–3862), as amended by the Food, Conservation, and Energy Act of 2008 (see Pub. L. 110–246, Title II, Subtitle A), relating to highly erodible lands and wetlands are in 7 CFR part 12. In order to ensure that persons who request program benefits subject to conservation restrictions obtain the necessary technical assistance and are informed regarding compliance requirements on their land, information is collected with regard to their intended activities on their land which could affect their eligibility for requested USDA benefits. Once technical determinations are made, producers are required to certify that they will comply with conservation requirements on their land to maintain their eligibility for certain programs. Persons may request that certain activities be exempt according to provisions of the 1985 Farm Bill. Information is collected from those individuals who seek these exemptions for the purpose of evaluating whether the exempted conditions will be met. Forms AD–1026, AD–1026B, AD–1026C, AD–1026D, AD–1068, AD–1069, CCC–21, and FSA–492 are being used for making determinations in this information collection. The forms are not required to be completed on an annual basis.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Individuals and entities.

Estimated Number Respondents: 262,788.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours: 262,346.

We are requesting comments on all aspects of this information collection to help us to:

(1) Determine whether the continued collection of information is still necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Assess the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for the Office of Management and Budget approval.

Signed on November 27, 2012.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2012–30020 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Youth Conservation Corps Application and Medical History

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service and certain Department of Interior agencies are seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, OMB 0596–0084, Youth Conservation Corps Application and Medical History. The collected information will help agencies evaluate the employment eligibility of youth 15 to 18 years old through the Youth Conservation Corps Program. Under the Program, Federal agencies provide seasonal employment for youth.

DATES: Comments must be received in writing on or before February 11, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Volunteers & Service Program Manager, USDA Forest Service, Recreation, Heritage, and Volunteer Resources (RHVR), 201 14th Street NW., Mailstop 1125, Washington, DC 20024.

Comments also may be submitted via facsimile to 202–205–1145 or by email to: *ncoyote@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, Rosslyn Plaza Building, RHVR, 1601 North Kent St., 4th Floor, Arlington, VA 22209 during normal business hours. Visitors are encouraged to call ahead to 202–205–1706 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Nancy Coyote, Recreation, Heritage, and Volunteer Resources staff, 503–347–9991.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Youth Conservation Corps Application and Medical History.

OMB Number: 0596–0084.

Expiration Date of Approval: 05/31/2013.

Type of Request: Revision of a currently approved collection.

Abstract: Under the Youth Conservation Corps Act of August 13, 1970, as amended (16 U.S.C. 1701–1706), the Forest Service, U.S. Department of Agriculture; the Fish and Wildlife Service, and National Park Service, U.S. Department of Interior, cooperate to provide seasonal employment for eligible youth 15 through 18 years old. The Youth Conservation Corps stresses three important objectives:

1. Accomplish needed conservation work on public lands;

2. Provide gainful employment for 15 to 18 year old male and females from all social, economic, ethic, and racial backgrounds; and

3. Foster, on the part of the 15 through 18 year old youth, an understanding and appreciation of the Nation's natural resources and heritage.

Youths seeking training and employment with the Youth Conservation Corps must complete the following forms: FS–1800–18, Youth Conservation Corps Application and FS–1800–3, Youth Conservation Corps Medical History. The applicant's parent or guardian must sign both forms. The application and medical history form are evaluated by participating agencies to determine the eligibility of each youth for employment with the Youth Conservation Corps.

FS–1800–18, Youth Conservation Corps (YCC) Application: Applicants are asked to answer questions that includes their name, social security number, date of birth, age, mailing address, telephone numbers, email address, gender, educational background, desired work location, where they learned about the program, history of criminal conviction, work or volunteer history including working with a team or group, recreational activities that would help prepare them for outdoor work, why they want to enroll in a YCC program, and what they think is the biggest challenge facing the world today.

FS–1800–3, Youth Conservation Corps Medical History: Accepted applicants are asked to provide contact information, age and date of birth, gender, emergency contact information, parent or guardian's contact information and signature, medical insurance information, medical history including vaccination history, previous and current illnesses or conditions that may affect ability to perform certain tasks, primary language, ethnic background (optional), exercise currently undertaken, and swimming ability. The purpose of this form is to certify the youth's physical fitness to work in the seasonal employment program.

Estimate of Annual Burden: 14 minutes per form per respondent.

Type of Respondents: Youth 15 through 18 years old seeking seasonal employment with the above-named agencies, through the YCC program.

Estimated Annual Number of Respondents: 15,400.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 4,795 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 3, 2012.

James M. Pẽna,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–29926 Filed 12–12–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Appointment in the NOAA Commissioned Officer Corps.

OMB Control Number: 0648–0047.

Form Number(s): NOAA 56–42, 56–42A.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 1,800.

Average Hours per Response: Applications, 2 hours; interviews, 5 hours; reference letters, 15 minutes.

Burden Hours: 2,475.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The NOAA Commissioned Corps is the uniformed component of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the Department of Commerce. Officers serve under Presidentially-confirmed appointments (33 U.S.C. Chapter 17, Subchapter 1, Sections 853 and 854 and PL 112–166 Section 2. (gg)(1), Presidential Appointment Efficiency and Streamlining Act of 2011). The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines, who are dedicated to the service of their country and optimization of NOAA's missions to ensure the economic and physical well-being of the Nation. NOAA Corps officers serve in assignments throughout NOAA, as well as in each of NOAA's Line Offices (National Environmental Satellite, Data, and Information Service, National Marine Fisheries Service, National Ocean Service, National Weather Service, Office of Oceanic and Atmospheric Research, and Office of Program, Planning, and Integration).

Persons wishing to be considered for a NOAA Corps Commission must submit a complete application package, including NOAA Form 56–42, at least three letters of recommendation, and official transcripts. A personal interview must also be conducted. Eligibility requirements include a bachelor's degree with at least 48 credit hours of science, engineering, or other disciplines related to NOAA's missions (including either calculus or physics), excellent health, normal color vision with uncorrected visual acuity no worse than 20/400 in each eye (correctable to 20/20), and ability to complete 20 years of active duty commissioned service prior to their 62nd birthday.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: December 10, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–30055 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–132–2012]

Foreign-Trade Zone 7—Mayaguez, PR; Application for Subzone; Pepsi Cola Puerto Rico Distributing, LLC, Toa Baja, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting special-purpose subzone status for the facility of Pepsi Cola Puerto Rico Distributing, LLC, located in Toa Baja, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on December 7, 2012.

The proposed subzone (19.99 acres) is located at Carretera 865, Km. 0.4, Barrio Candelario Arenas, Toa Baja. A notification of proposed production activity has been docketed (B–84–2012). The proposed subzone would be subject to the existing activation limit of FTZ 7.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 22, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 6, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 7, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–30116 Filed 12–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2012]

Authorization of Production Activity, Foreign-Trade Subzone 107A, Winnebago Industries, Inc. (Polyurethane Coated Upholstery Fabric), Forest City and Charles City, IA

On July 24, 2012, Winnebago Industries, Inc., operator of Subzone 107A in Forest City and Charles City, Iowa, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 50462–50463, 8–21–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: December 7, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–30127 Filed 12–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–88–2012]

Foreign-Trade Zone 84—Houston, TX; Notification of Proposed Production Activity; Mitsubishi Caterpillar Forklift America Inc.; (Forklift Trucks); Houston, TX

The Port of Houston Authority, grantee of FTZ 84, submitted a notification of proposed production activity on behalf of Mitsubishi Caterpillar Forklift America Inc. (MCFA), located in Houston, Texas. The notification conforming to the requirements of the regulations of the Foreign-Trade Zones Board (15 CFR 400.22) was received on November 2, 2012.

The MCFA facilities are located at: 1722, 1730, 1810, 1812 Brittmoore Road; and, 2007, 2011, 2015, 2021, 2121 West Sam Houston Parkway North; Houston (Harris County), Texas. A separate application for subzone status at the MCFA facilities is planned and will be processed under Section 400.31 of the Board's regulations. The facilities are used for the production of forklift trucks (Class I through Class V) powered by gasoline, propane or electric motors. Production under FTZ procedures could exempt MCFA from customs duty payments on the foreign status components and materials used in export production. On its domestic sales, MCFA would be able to choose the duty rate during customs entry procedures that applies to forklift trucks (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: oils and greases, brake fluids, adhesives, silicones, plastic tubes/pipes/hoses/fittings, articles of plastic (sheeting, cases, boxes, stoppers, lid, handles, knobs, fasteners, gaskets, washers, o-rings), sacks, bags, containers, builders ware, clips, belts, articles of rubber (seals, o-rings, gaskets, mats, knobs, caps, lids, dampeners, tubes, pipes, hoses, tires, rods, containers, handles, belts), pallets, wood packing boxes, cases, other printed materials, brake linings, labels, adhesive tapes, safety glass, mirrors, parts of fiberglass, windshields, bars, pipe fittings, pipes and tubes of iron/steel/copper, chains, fasteners, steel cables and rods, articles of copper, articles of aluminum, locks and keys, articles of base metal, flanges, wrenches, hand tools, flexible tubing, engines, parts of engines, water boilers, control panels, control centers, switchgear assemblies, distribution boards, printed circuits, torque converters, parts of forklift trucks, electric motors, hydraulic pumps, crankshafts, camshafts, crank regulators, terminals, insulators, transmissions/speed changers and related parts, axles, CV joints, commutators, gears, shafts, relays, flywheels, pulleys, rubber tubes/pipes, harnesses, catalytic converters, filters, heat exchangers, hydraulic cylinders/fluid power components, accumulators, taps/cocks, valves and related parts, fuel injection pumps, flow meters, electromagnetic couplings/clutches, brake parts, wire, electric conductors/converters, exhaust parts, steering components, pumps, parts of pumps/compressors, turbochargers, fans and related parts, air-conditioners, filters, starters, bearings and related parts, floor coverings, electrical connectors and related assemblies, wiring harnesses, fasteners, couplings/u-joints, gaskets, generators, alternators, carbon brushes, electric motors, transformers, rotors, stators, power supplies, converters, spark plugs, batteries, ignition parts, coils, distributors, starters, relays, switches, horns, capacitors, resistors, fuses, diodes, transistors, thyristors, semiconductor devices, controllers, circuit breakers and protectors, conductors, junction boxes, lamps/lighting equipment, sound signaling devices, thermostats, seats and related parts, seat belts, windshield wipers, cameras, suspension parts, radiators, road wheels, measuring/metering instruments, speedometers, tachometers, shock absorbers, and optical lenses (duty rate range: free—12.5%, 36¢ each/8¢ per jewel + 5.6%). The request indicates that all foreign steel products subject to an antidumping/countervailing duty order will be admitted in domestic (duty-paid) status (19 CFR 146.43).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 22, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov,* or (202) 482–1378.

Dated: December 7, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–30133 Filed 12–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') published its *Preliminary Results* of administrative review of the antidumping duty order on citric acid and certain citrate salts from the People's Republic of China (''PRC'') on June 6, 2012.[1] The period of review (''POR'') is May 1, 2010, through April 30, 2011. Further, the Department released the results of its Post-Preliminary analysis on October 23, 2012,[2] in which we determined that the antidumping margin calculation methodology shall remain unchanged from the *Preliminary Results.* We gave interested parties an opportunity to comment on the *Preliminary Results* and Post-Preliminary Results. Based on our analysis of the comments received, the final results do not differ from the *Preliminary Results.* The final dumping margin for this review is listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Robert Bolling, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–3434, respectively.

Background

On June 6, 2012, the Department published its *Preliminary Results.* On July 6, 2012, RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., RZBC (Juxian) Co., Ltd. (collectively ''RZBC'') submitted a case brief for this administrative review.[3] On July 11, 2012, the Department received a rebuttal brief from Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (''Petitioners'').[4] No other party submitted comments.

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), 19 CFR 351.213, and 19 CFR 351.221.

Scope of the Order

The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate.[5] Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs and additional comments received by parties in this review are addressed in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Second Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China'' (dated concurrently with this notice) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and

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[1] *See Preliminary Results of the Second Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review,* 77 FR 33399 (June 6, 2012) (*''Preliminary Results''*).

[2] See Memorandum from Abdelali Elouaradia to Paul Piquado, regarding ''Second Antidumping Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Post-Preliminary Analysis Memo,'' dated October 22, 2012 (''Post-Preliminary Results'').

[3] *See* Letter from RZBC to the Department, regarding ''Citric Acid and Citrate Salt from the People's Republic of China: Case Brief,'' dated July 6, 2012. The Department also considered RZBC's pre-preliminary comments for the final results. *See* Letter from RZBC to the Department, regarding ''Citric Acid and Citrate Salt from People's Republic of China: Pre-preliminary Results Comments,'' dated May 8, 2012.

[4] *See* Letter from Petitioners to the Department, regarding ''Citric Acid and Certain Citrate Salts From The People's Republic of China: Rebuttal Brief,'' dated July 11, 2012.

[5] *See* Issues and Decision Memorandum issued concurrently with this notice for a complete description of the Scope of the Order.

[6] *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009).

Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on an analysis of the comments received, the Department has not made any changes in the margin calculation since the *Preliminary Results.*

Final Results of Review

We determine that the dumping margins for the POR are as follows:

Exporter	Weighted-average margin (percent)
RZBC Co., Ltd./RZBC Imp. & Exp. Co., Ltd./ RZBC (Juxian) Co., Ltd	0.00

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondents whose weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer) specific assessment rate is *de minimis* under 19 CFR 351.106(c) (*i.e.,* less than 0.50 percent), the Department will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For RZBC, because the rate is zero, no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate established in the final determination of the less than fair value investigation (*i.e.,* 156.87 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of the final results of these reviews is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Whether the Department Should Exclude Water from the Margin Calculation
Comment 2: Surrogate Value for Water

[FR Doc. 2012–29977 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–DS–P

[7] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper From India: Notice of Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 13, 2012.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2012, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty order on certain lined paper from India.[1]

Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this countervailing duty administrative review with respect to 82 companies for the period January 1, 2011, through December 31, 2011.[2] On November 27, 2012, petitioners[3] withdrew their review request.[4]

Partial Rescission of the 2011 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated the instant review on October 31, 2012.[5] The petitioners' withdrawal request was submitted within the 90-day period and, thus, is timely. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review

[1] *See* Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 53863 (September 4, 2012).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 65858 (October 31, 2012) (Initiation).

[3] Petitioners are the Association of American School Paper Suppliers.

[4] *See* petitioners' November 27, 2012, Withdrawal of Request for Administrative Review.

[5] *See Initiation.*

of the countervailing duty order on certain lined paper from India with respect to the companies requested by petitioner.[6] The instant review will continue with respect to Navneet Publications (India) Ltd. and A.R. Printing & Packaging India Pvt. Ltd. both of whom requested a review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2011, through December 31, 2011, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 7, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–30118 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* petitioner's September 28, 2012, Request for Administrative Review for a full list of all the companies requested.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on honey from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2012, the Department initiated a sunset review of the antidumping duty order on honey from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] As a result of its review, the Department determined that revocation of the antidumping duty order on honey from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[2] On December 5, 2012, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on honey from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, 2106.90.99, 0409.00.0010, 0409.00.0035, 0409.00.0005, 0409.00.0045, 0409.00.0056, and 0409.00.0065 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Also included in the scope are blends of honey and rice syrup, regardless of the percentage of honey contained in the blend.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on honey from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 5, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–30111 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 39218 (July 2, 2012).

[2] *See Honey From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 77 FR 59896 (October 1, 2012).

[3] *See Honey from China; Determination,* 77 FR 72385 (December 5, 2012); *see also* Honey from China: Investigation No. 731–TA–893 USITC Publication 4364 (November 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On December 5, 2012, the NAFTA Chapter 19 binational panel issued its decision in the review of the final results of the 2008/2009 antidumping administrative review made by the U.S. Department of Commerce, respecting Light-Walled Rectangular Pipe and Tube from Mexico, NAFTA Secretariat File Number USA–MEX–2011–1904–02. The panel remanded the matter to the U.S. Department of Commerce and Ordered that Commerce provide the Panel with its explanation regarding its practice of zeroing in administrative reviews, but not in antidumping investigations. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision: On December 5, 2012, the binational panel remanded the matter of Light-Walled Rectangular Pipe and Tube from Mexico (NAFTA Secretariat File Number USA–MEX–2011–1904–02) to the U.S. Department of Commerce to provide a thorough explanation of why it is a reasonable interpretation of the statute to engage in zeroing in administrative reviews, but not in antidumping investigations. The panel directed Commerce to provide such explanation within 90 days of the date of issue of the panel's Decision and Order. (March 5, 2013)

Dated: December 5, 2012.

Ellen M. Bohon,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2012–30025 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the Department of Commerce's Final Determination of Carbon and Certain Alloy Steel Wire Rod from Canada (Secretariat File No. USA–CDA–2008–1904–02).

SUMMARY: Pursuant to the Decision and Order of the Binational Panel dated October 25, 2012, the panel review was completed on December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On October 25, 2012, the Binational Panel issued a Decision and Order affirming the U.S. Department of Commerce's final determination concerning Carbon and Certain Alloy Steel Wire Rod from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge Committee was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists were discharged from their duties effective December 6, 2012.

Dated: December 6, 2012.

Ellen M. Bohon,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2012–30027 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA) National Climate Assessment and Development Advisory Committee (NCADAC)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the DoC NOAA National Climate Assessment and Development Advisory Committee (NCADAC).

Time and Date: The meeting will be held Friday, January 11, 2013 from 11:00 a.m.–1:00 p.m. Eastern time.

Place: This meeting will be a conference call. Public access and materials will be available at the office of the U.S. Global Change Research Program, Conference Room A, Suite 250, 1717 Pennsylvania Avenue NW., Washington, DC 20006. The public will not be able to dial into the call. Please check the National Climate Assessment Web site for additional information at *http://www.globalchange.gov/what-we-do/assessment.*

Status: The meeting will be open to public participation with a 10-minute public comment period from 12:45–12:55 p.m. The NCADAC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two minutes. Written comments should be received in the NCADAC DFO's office by Monday, January 7, 2013 to provide sufficient time for NCADAC review. Written comments received by the NCADAC DFO after Monday, January 7, 2013 will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on Monday, January 7, 2013 to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters To Be Considered: Please refer to the Web page *http://www.nesdis.noaa.gov/NCADAC/index.html* for the most up-to-date meeting agenda, when available.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Designated Federal Official, National Climate Assessment and Development Advisory Committee, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Climate Assessment and Development Advisory Committee was established in December 2010. The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.

Dated: December 7, 2012.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–30152 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[DOCKET NUMBER: 121203675–2675–01]

RIN 0648–XC384

Solicitation of Review Editors for the Draft Report of the National Climate Assessment and Development Advisory Committee (NCADAC).

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of solicitation.

SUMMARY: NOAA is soliciting nominations for review editors of the National Climate Assessment and Development Advisory Committee (NCADAC) National Climate Assessment 2013 Draft Report. The NCADAC was established under the Department of Commerce in January 2011 and is a federal advisory committee established as per the Federal Advisory Committee Act of 1972.

DATES: Nominations should be sent to the address specified and must be received by January 11, 2013.

ADDRESSES: Nominations and applications should be submitted electronically to the office of the U.S. Global Change Research Program at *email@usgcrp.gov*. More information on the National Climate Assessment can be found at *http://www.nesdis.noaa.gov/NCADAC/index.html* or *http://www.globalchange.gov/what-we-do/assessment/draft-report-information*.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, National Climate Assessment and Development Advisory Committee, NOAA, 1315 East-West Highway, R/SAB, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov*); or visit the NOAA NCADAC Web site at *http://www.nesdis.noaa.gov/NCADAC/index.html*.

SUPPLEMENTARY INFORMATION: The National Climate Assessment and Development Advisory Committee was established in January 2011. The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a proposed National Climate Assessment that meets the requirements of the Global Change Research Act, 15 U.S.C. § 2931, *et seq.*

NOAA publishes this notice to solicit nominations for Review Editors of the National Climate Assessment and Development Advisory Committee (NCADAC) National Climate Assessment 2013 Draft Report.

Review Editor Role In the NCA Process: One Review Editor for each NCA 2013 Report Chapter (see list below) will be responsible for compliance review to determine whether or not public, Federal Agency, and National Research Council comments have been adequately addressed by the chapter authors. Review Editors must be subject matter experts, and may not be members of the NCADAC or members of chapter author teams.

Nominations: Nominations may be made by individuals themselves or by a third party. All nominations must provide: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise and National Climate Assessment chapter for which the person is to be considered (see list below); and (3) a (maximum length two [2] pages) resume or curriculum vitae. If nominations are made by a third party, that person should indicate if the individual nominated has been asked if he/she is willing to serve.

National Climate Assessment 2013 Draft Report Chapters: Our Changing Climate; Water Resources; Energy Supply and Use; Transportation; Agriculture; Forestry; Ecosystems and Biodiversity; Human Health; Water, Energy, and Land Use; Urban Systems; Infrastructure, and Vulnerability; Tribal, Indigenous, and Native Lands and Resources; Land Use and Land Cover Change; Rural Communities; Biogeochemical Cycles; Northeast Region; Southeast and Caribbean Region; Midwest Region; Great Plains Region; Southwest Region; Northwest Region; Oceans and Marine Resources; Coastal Zone Development and Ecosystems; Decision Support; Mitigation, Adaptation; Research Agenda for Climate Change Science; The NCA Long-Term Process.

Dated: December 6, 2012.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–30147 Filed 12–12–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0160]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 11, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Uniform Business Office (UBO), OASD(HA)/TRICARE Management Activity/Management Control & Financial Studies, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042, ATTN: DeLisa E. Prater, Program Manager, 703–681–3492 ext. 6757 (DSN 761).

Title; Associated Form; and OMB Number: Third Party Collection Program/Medical Services Account/Other Health Insurance; DD Form 2569; OMB Control Number 0720–TBD (previously OMB Control Number 0704–0323).

Needs and Uses: The information collection requirement is necessary to obtain health insurance policy information used for coordination of health care benefits and billing third-party payers. DoD implemented the Third Party Collection Program (TPCP) in FY87 based on the authority granted in 10 U.S.C. 1095 and implemented by 32 CFR 220 in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) (Pub. L. 99–272, section 2001, April 7, 1986). Under the TPCP, DoD is authorized to collect from third-party payers the cost of inpatient and outpatient services rendered to DoD beneficiaries who have other health insurance. Military treatment facilities are required to make this form available to third-party payers upon request. A third-party payer may not request any other assignment of benefits form from the subscriber.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 146,845.

Number of Respondents: 2,936,905.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: Annually, or on occasion (when insurance information changes).

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The administration has placed an increased emphasis upon recovery of health care expenses under the TPCP, as authorized by 10 U.S.C. 1095 and 1097b. Completion of this form, while increasing total burden hours, will aid in increasing revenue to improve services, operating efficiency and effectiveness within the Military Health System. Funds collected return directly to the operation and maintenance budget of the MTF where the care was delivered and are used to improve the quality of healthcare. Often the funds allow the continuation of programs or purchasing of equipment at the facilities for which there would otherwise not be funding. This information is collected either during the admission and/or discharge process for an inpatient stay or during the registration process for an outpatient visit.

Dated: December 7, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–30032 Filed 12–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0032]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on January 14, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before January 14, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 3, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 7, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC V

SYSTEM NAME:

Awards and Decorations (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with ''F036 AFPC V''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, United States Air Force, Washington DC 20330–1670. Directorate of Personnel Program Actions, Headquarters Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001.

Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force active duty, Air Force Reserve, Air National Guard and United States civilian personnel who are recommended for an award.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Full name, Social Security Number (SSN), rank, office address, work and home phone numbers, previous awards and/or decorations.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. Chapter 857, Decorations and Awards; as implemented by Air Force Instruction 36–2803, The Air Force Awards and Decorations Program; and E.O. 9397 (SSN) as amended.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Name and/or SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by person(s) responsible for servicing the record system with a Common Access Card (CAC) in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Special Honors, trophies and awards program sponsored by Air Force and private organizations, including nominations of individuals, units and groups, announcements of awards and related forms and correspondence at Headquarters United States Air Force (HQ USAF), Headquarters Air Force Personnel Center (HQ AFPC), and Major Command (MAJCOM) are destroyed after 50 years. Decorations to individuals (Military and Civilian) disapproved by U.S. Military are destroyed after 35 years. Approved/disapproved decorations and awards at initiating and intermediate monitoring headquarters are destroyed after decoration is awarded or 1 year after disapproval. Decorations to foreign nationals and U.S. citizens not employed by U.S. government are retired as permanent 2 years after completion of case; records are stored at Randolph AFB TX. Files are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Executive Director, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Directorate of Personnel Program Actions, Headquarters Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001.

For verification purposes the individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written requests to the Executive Director, Headquarters, Air Force Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001 or to the agency officials at location of assignment.

For verification purposes the individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records and their signature.

In addition the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Air Force Privacy Program or may be obtained from the system manager.''

* * * * *

[FR Doc. 2012–30030 Filed 12–12–12; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS 2012–0044–0001]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Production Surveillance and Reporting (OMB Control Number 0704–0250)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice; request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof.

DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through March 31, 2013. DoD proposes that OMB extend its approval for use for an additional three years.

DATES: DoD will consider all comments received by February 11, 2013.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0250, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include OMB Control Number 0704–0250 in the subject line of the message.

Fax: (571) 372–6096.

Mail: Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, at 571–372–6098. The information collection requirements addressed in this notice are available via the Internet at: *http://www.acq.osd.mil/dpap/dars/dfars/index.htm.* Paper copies are available from Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–2062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 242, Contract Administration and Audit Services, and related clauses in DFARS part 252; DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions; DFARS 247.207 and the related clause at 252.247–7028; OMB Control Number 0704–0250.

Needs and Uses: The Government requires this information in order to perform its contract administration functions. DoD uses the information as follows:

a. The information required by DFARS subpart 242.11 is used by contract administration offices to monitor contract progress, identify factors that may delay contract performance, and to ascertain potential contract delinquencies.

b. The information required by DFARS 252.242–7004 is used by contracting officers use to determine if contractor material management and accounting systems conform to established DoD standards.

c. The information required by DFARS 252.247–7028, and submitted on DD Form 1659, is used by contract administration offices and transportation officers to provide bills of lading to contractors. This requirement was previously addressed at DFARS 242.1404–2–70, and the related clause at DFARS 252.242–7003. Since the last renewal of this public information collection requirement, DFARS 242.14 has been realigned under DFARS part 247; therefore, when the associated OMB Clearance (No. 0704–0245) for DFARS part 247 is renewed in 2014, the information required by DFARS 252.247–7028 will be included in that renewal request and will not be included in any future renewal requests for DFARS part 242, Contract Administration and Audit Services.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 202,103.

Number of Respondents: 20,865.

Responses per Respondent: 7.285.

Annual Responses: 152,014.

Average Burden per Response: 1.2 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements relating to DFARS part 242, Contract Administration and Audit Services, DFARS 247.207, and the related clauses at DFARS part 252.

a. DFARS subpart 242.11 requires DoD contract administration personnel to perform production surveillance to monitor contractor progress and identify any factors that may delay performance. The Government relies on the production progress reports provided by the contractor in the performance of this function.

b. DFARS 252.242–7004 requires contractors to establish, maintain, and disclose material management and accounting systems.

c. DFARS 252.247–7028 requires contractors to request bills of lading by submitting DD Form 1659 to the transportation officer or the contract administration office.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–30120 Filed 12–12–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License: Kismet Management Fund LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Kismet Management Fund LLC, a revocable, nonassignable, exclusive license to practice throughout the United States, the Government-owned inventions described in U.S. Patent No. 7,051,098: System for Monitoring and Reporting Performance of Hosts and Applications and Selectively Configuring Applications in a Resource Management System//U.S. Patent No. 7,096,248: Program Control for Resource Management Architecture and Corresponding Programs//U.S. Patent No. 7,171,654: System Specification Language for Resource Management Architecture and Corresponding Programs//U.S. Patent No. 7,181,743: Resource Allocation Decision Function for Resource Management Architecture and Corresponding Programs//U.S. Patent No. 7,552,438: Resource Management Device.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 28, 2012.

ADDRESSES: Written objections are to be filed with the Naval Surface Warfare Center Dahlgren Division, Code CD1TP2, 17632 Dahlgren Road, Suite 201, Dahlgren, VA 22448–5154.

FOR FURTHER INFORMATION CONTACT: Lorraine Flanders, Office of Research and Technology Applications Manager, Code CD1TP2, Naval Surface Warfare

Center Dahlgren Division, 17632 Dahlgren Road, Suite 201, Dahlgren, VA 22448–5154; telephone 540–653–2680, or email *lorraine.flanders@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: December 5, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–30144 Filed 12–12–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–20–000]

Stingray Pipeline Company, L.L.C.; Notice of Application

Take notice that on November 26, 2012, Stingray Pipeline Company, L.L.C. (Stingray), 1100 Louisiana, Suite 3300, Houston, Texas 77002, filed in the above referenced docket an abbreviated application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon its 12-inch and 20-inch Vermilion Lateral (VR Lateral) located in federal waters offshore Louisiana. Stingray requests authority to abandon portions of the VR Lateral by sales to Chevron U.S.A Inc., Dynamic Offshore Resources, LLC, Hall-Houston Exploration III, L.P., GOM–H Exploration, LLC, and Callon Petroleum Operating Company (collectively referred to as the Affected Producers), and to abandon the remaining portion in place. Stingray also requests a determination that the segments of the VR Lateral that will remain in service following abandonment by sale to the Affected Producers will be gathering facilities not subject to the Commission's jurisdiction pursuant to section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Cynthia Hornstein Roney, Manager—Regulatory Affairs, Stingray Pipeline Company, L.L.C., 1100 Louisiana, Suite 3300, Houston, Texas 77002, telephone no. (832) 214–9334 and email: *cynthia.roney@enbridge.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 28, 2012.

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30064 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–16–000; Docket No. PR13–17–000; Not Consolidated]

TexStar Transmission, LP; TEAK Texana Transmission Company, LP; Notice of Baseline Filings

Take notice that on December 6, 2012, the applicants listed above submitted a baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (''NGPA'').

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, December 14, 2012.

Dated: December 07, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30070 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Notice of Request for Comments and Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference to elicit input pertaining to information sharing and communications issues between natural gas and electric power industry entities. The technical conference will take place on February 13, 2013 beginning at 9:00 a.m. and ending at approximately 4:00 p.m. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. All interested persons are invited to participate at the conference. Commission members may participate in the conference.

On November 15, 2012, the Commission issued an order directing further conferences and reports in the above captioned docket.[1] In the November 15 Order, the Commission directed staff to establish a technical conference to identify areas in which additional Commission guidance or regulatory changes could be considered. In advance of this conference, interested parties are asked to file comments on the following questions related to communications and information sharing:

1. During an emergency, what kind of verbal communications and data exchanges do and should take place between the natural gas and electric industries? What are the industries' current ''best practices'' for these communications? How can today's best practices be improved? What should the Commission do, if anything, to facilitate the application of best practices between the industries?

2. Please provide specific examples of other communications practices between the natural gas and electric industries that could be enhanced, including any communications regarding maintenance and construction planning, day-to-day operations, and other non-emergency situations. In providing examples, please explain whether there are regulatory or other barriers that would prevent good communications such as specific Commission regulations, tariffs or contractual provisions, legal precedents, or inadequate communications infrastructure.

3. Should natural gas pipeline and electric utility system operators be allowed to exchange information that is not publicly posted? If so, what kinds of information should be permitted to be shared and under what circumstances? If information is shared, is there a need for enhanced protections against the improper use of the material communicated and what protections would be appropriate? Is the answer the same if a natural gas pipeline or its affiliate sells or buys wholesale electric power? If there are concerns that the increased communications might cause potential harm to industry participants, please explain those concerns. Please consider examples of information sharing that include both verbal and digital information.

Responses to these questions will form the basis of the agenda for and discussion at the February 2013 technical conference on communications and information-sharing. Comments responding to this notice should be submitted, in Docket No. AD12–12–000, on or before January 7, 2013. Comments may be filed electronically via the Internet. See the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

A supplemental notice will be issued prior to the technical conference with information about the agenda and organization of the technical conference. Those interested in attending the technical conference are encouraged, but not required, to register by close of business February 10, 2013. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/gas-elec-mkts-02-13-13-form.asp.* Those also interested in speaking at the technical conference should notify the Commission by January 7, 2013 by completing the online form at the following Web page: *https://www.ferc.gov/whats-new/registration/gas-elec-mkts-speaker-02-13-13-form.asp.* Due to time constraints, we may not be able to accommodate all those interested in speaking.

The technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate.

Anyone with Internet access who wants to listen to the conference can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Notice is also hereby given that the discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing

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[1] *Coordination Between Natural Gas and Electricity Markets,* 141 FERC ¶ 61,125, at P 5 (2012) (November 15 Order).

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the conference.

period: ISO New England Inc., Docket No. ER13–356–000.

Information on the technical conference will also be posted on the Web site *http://www.ferc.gov/industries/electric/indus-act/electric-coord.asp,* as well as the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about the technical conference, please contact: Caroline Daly (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8931, *Caroline.Daly@ferc.gov.* Anna Fernandez (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6682, *Anna.Fernandez@ferc.gov.* Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30063 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14066–002]

Inside Passage Electric Cooperative; Alaska; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's or FERC's) regulations, 18 CFR Part 380 (Order No. 486 52 FR 47,897), the Office of Energy Projects has reviewed the application for an original license to construct the Gartina Falls Hydropower Project, and has prepared an environmental assessment (EA). The proposed 450-kilowatt project would be located on Gartina Creek, near the Town of Hoonah, Alaska. The project would not occupy any federal lands.

The EA includes staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects.

Please contact Ryan Hansen by telephone at (202) 502–8074, or by email at *ryan.hansen@ferc.gov,* if you have any questions.

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30067 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of ISO New England Inc.:

NEPOOL Transmission Committee

- December 14, 2012

The above-referenced meeting will be held via conference call.

The above-referenced meeting is open to stakeholders.

For additional information, see: *http://www.iso-ne.com/committees/comm_wkgrps/index.html*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–193–000, *ISO New England Inc.*

Docket No. ER13–196–000, *ISO New England Inc.*

For more information, contact William Lohrman, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8070 or *William.Lohrman@ferc.gov.*

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30066 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–15–000]

Dow Pipeline Company; Notice of Petition for Rate Approval

Take notice that on November 30, 2012, Dow Pipeline Company filed a petition for rate approval pursuant to Section 284.123(b)(2) of the Commission's regulations for approval of a new rate applicable to interruptible transportation service and to revise its Statement of Operating Conditions, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, December 14, 2012.

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30069 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–14–000]

Magic Valley Pipeline, L.P.; Notice of Petition for Rate Approval

Take notice that on November 30, 2012, Magic Valley Pipeline, L.P. (Magic Valley) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations for approval of a new rate applicable to firm transportation service, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, December 14, 2012.

Dated: December 07, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30068 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Filed date	Presenter or requester
Prohibited		
1. CP11–515–000	12–4–12	Janice & Kevin O'Keeffe
2. CP11–515–000	12–6–12	Thomas Salamone
3. CP11–515–000	12–6–12	Michael Mojica [1]
Exempt		
1. CP13–8–000	11–20–12	Hon. Andy Harris, M.D.
2. P–12690–005	11–27–12	FERC Staff [2]

Docket No.	Filed date	Presenter or requester
3. ER13–351–000 EL13–21–000	11–29–12	Robert Weisenmiller[3]
4. ER13–185–000	12–4–12	CT General Assembly[4]
5. P–2342–000	12–4–12	Kate Valdez

[1] Email record.
[2] Phone record.
[3] Email record.
[4] Hons. Rob Kane and Arthur O'Neill.

Dated: December 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30062 Filed 12–12–12; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board Action To Approve a Plan of Voluntary Liquidation for, and To Cancel the Charter of, the Farm Credit Finance Corporation of Puerto Rico

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: On August 22, 2012, the Farm Credit Administration (FCA) Board authorized the voluntary liquidation of the Farm Credit Finance Corporation of Puerto Rico (FCFCPR) without the appointment of a receiver, and the cancellation of FCFCPR's charter arising out of the voluntary liquidation of the corporation. The Farm Credit Administration (FCA) Board also granted preliminary and final approval of the proposed Plan of Liquidation for the FCFCPR under 12 CFR 627.2795—Voluntary Liquidation of FCA regulations.

DATES: *Effective Date:* August 22, 2012.

FOR FURTHER INFORMATION CONTACT:

Thomas R. Risdal, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4257, TTY (703) 883–4434; or

Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: The FCFCPR was a service corporation chartered by the FCA on November 26, 1984, as a wholly-owned subsidiary of AgFirst Farm Credit Bank (AgFirst), for the purpose of providing a lower-cost funding source for the operations of Farm Credit of Puerto Rico, ACA. This was based on tax provisions in the Internal Revenue Code in effect at the time of chartering. On October 25, 2005, FCFCPR submitted to FCA certified copies of Resolutions of the Boards of Directors of AgFirst and FCFCPR suspending the operations of the FCFCPR, effective December 31, 2005. As stated in the resolutions, the Board of Directors of the FCFCPR determined that there was insufficient financial benefit resulting from island-based tax treatment of the corporation to justify continuing its operations. By letter dated July 17, 2012, AgFirst, as sole stockholder of FCFCPR, stated its intent to liquidate the corporation in a voluntary liquidation. The service corporation had been inactive for more than 6 years, and at the time of deactivation there were no outstanding claims and no assets or active financial affairs that required winding down or reconciliation. AgFirst stated further that there was no active board for the FCFCPR and that AgFirst would be responsible for any claims arising against FCFCPR following cancellation of the charter.

On August 22, 2012, the FCA Board authorized the voluntary liquidation of FCFCPR without the appointment of a receiver pursuant to 12 CFR 627.2795(a), and the cancellation of FCFCPR's charter arising out of the corporation's voluntary liquidation. The text of the FCA Board action is set forth below:

The Farm Credit Administration (FCA) Board grants preliminary and final approval of the proposed Plan of Liquidation for the Farm Credit Finance Corporation of Puerto Rico under FCA's regulation § 627.2795—Voluntary Liquidation and authorizes publication of Notice of the approval and cancellation of the Charter in the **Federal Register**.

Signed by Leland A. Strom, Chairman, Farm Credit Administration Board, on August 22, 2012.

Dated: December 7, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–30134 Filed 12–12–12; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2012, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 13, 2012

B. Business Reports

- September 30, 2012 Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

Closed Session

- Confidential Report on System Performance
- Audit Plan for the Year Ended December 31, 2012

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Dated: December 7, 2012.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2012–30035 Filed 12–12–12; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 11, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; §§ 73.807, 73.809, 73.810, 73.827, 73.850, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or Tribal governments.

Number of Respondents and Responses: 21,019 respondents with multiple responses; 27,737 responses.

Estimated Time per Response: .0025–12 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; monthly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,471 hours.

Total Annual Costs: $39,750.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: On December 4, 2012, the FCC released a Sixth Report and Order (''Order''), MM Docket No. 99–25, FCC 12–144. In the Order, the FCC revised § 73.853(b) of the Commission's rules (''rules'') to permit federally recognized Native American Tribes and Alaska Native Villages (''Tribal Nations'') and entities owned or controlled by Native Nations (collectively, ''Tribal Nation Applicants'') to hold LPFM licenses. The FCC also revised its definition of local to specify that Tribal Nation Applicants are considered local throughout their Tribal lands. We have revised FCC Form 318 to reflect these changes.

In the Order, the FCC also modified its ownership rules. First, the FCC revised its cross-ownership rule to permit cross-ownership of an LPFM station and up to two FM translator stations. Second, the FCC modified its cross-ownership rule to permit Tribal Nation Applicants to seek up to two LPFM construction permits to ensure adequate coverage of tribal lands. We have revised FCC Form 318 to reflect these changes.

The FCC further modified the point system used to select among mutually exclusive LPFM applicants and set forth in § 73.872 of the rules. First, the FCC revised the ''established community presence'' criterion to extend the ''established community presence'' standard in rural areas. Under the earlier version of the rule, an LPFM applicant was deemed to have an established community presence if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The FCC changed the standard from ten to twenty miles for all LPFM applicants proposing facilities located outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards. Second, the FCC modified the point system to award a point to Tribal Nation Applicants, when they propose to provide LPFM service to Tribal Nation communities. Third, the FCC established additional points criteria related to maintenance and staffing of a main studio, commitments to locally originate programming and maintain and staff a main studio, and new entry into the broadcasting field. We have revised the Form 318 to reflect these changes to the point system.

The FCC made a number of changes related to time-sharing. It adopted a requirement that parties submit voluntary time-sharing agreements via the Consolidated Database System. It also revised the Commission's involuntary time-sharing policy. As a result of these changes, an LPFM applicant must submit the date on which it qualified as having an ''established community presence.'' The FCC also may require certain LPFM applicants to indicate which 8-hour and 12-hour time slots they prefer. Finally, the FCC adopted a mandatory time-sharing policy similar to that applicable to full-service noncommercial educational FM stations. We have revised the Form 318 to reflect these changes.

Finally, the FCC modified the manner in which it processes requests for waiver of the second-adjacent channel minimum distance separation requirement, amended the rule related to third-adjacent channel interference, and amended the rule that sets forth the obligations of LPFM stations with respect to interference to the input signals of FM translator or FM booster stations. We have revised the Form 318 to reflect these proposed changes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–30102 Filed 12–12–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, Federal Communications Commission, at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0999.

OMB Approval Date: November 20, 2012.

OMB Expiration Date: November 30, 2015.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form No.: FCC Form 655.

Respondents: Business or other for profit entities.

Total Number of Respondents and Responses: 925 respondents; 925 responses.

Total Annual Burden: 12,063 hours.

Total Annual Cost: None.

Estimated Time per Response: 13.041081.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310 and 610 of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: Information requested in the reports may include confidential information. However, covered entities are allowed to request that such materials submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Privacy Act: N/A.

Needs and Uses: On April 9, 2012, the Commission adopted final rules in a Third Report and Order, DA12–550, which adopts the 2011 revision of the hearing aid compatibility technical standard (ANSI Standard) as an applicable technical standard alongside the 2007 version that is already in the Commission's rules.

Under the 2011 ANSI Standard, the Commission tailored its existing disclosure requirements to address new situations that may arise. Specifically, the Commission adopted a requirement to inform users about any operations in handsets that a manufacturer may have tested under the 2011 version of the ANSI Standard and found not to meet hearing aid compatibility criteria for those operations. The Commission also adopted a requirement to make disclosure about any handsets that have not been tested for the inductive coupling capability of Voice over Long Term Evolution (VoLTE) transmissions.

The Commission is now modifying the FCC Form 655 to collect information that is relevant to the newly effective provisions of the rule and to clarify and streamline existing fields. See the 60 day notice published in the **Federal Register** on July 30, 2012 (77 FR 44614) for the specific changes made to the form.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–30038 Filed 12–12–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–1912]

Notice of Debarment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mr. Willard Ross Lanham from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Willard Ross Lanham receives the debarment letter or January 14, 2013, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A236, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov*. If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Terry.Cavanaugh@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. William Ross Lanham from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 12–1912, which was mailed to Mr. William Ross Lanham and released on November 29, 2012. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com*.

Federal Communications Commission.

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division, Enforcement Bureau.

November 29, 2012

DA 12–1912

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL

Mr. Willard Ross Lanham
c/o Stephen N. Preziosi
Law Office of Stephen N. Preziosi P.C.
570 Seventh Avenue, Ninth Floor
New York, NY 10018

Re: Notice of Debarment, File No. EB–12–IH–0847

Dear Mr. Lanham:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to Section 54.8 of its rules, you are prohibited from participating in activities associated with or relating to the schools and libraries universal service support mechanism (E-Rate program) for three years from either the date of your receipt of this Notice of Debarment or of its publication in the **Federal Register,** whichever is earlier in time (Debarment Date).[1]

On July 27, 2012, the Commission's Enforcement Bureau (Bureau) sent you a Notice of Suspension and Initiation of Debarment Proceeding (Notice of Suspension)[2] that was published in the **Federal Register** on August 13, 2012.[3] The Notice of Suspension suspended you from participating in activities associated with or relating to the E-Rate program. It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the Notice of Suspension, in March 2012 you were convicted of one count of theft of federal funds and three counts of mail fraud in connection with your activities as a consultant for the New York City Department of Education (DOE), which included managing Project Connect, an E-Rate funded project.[4] As a DOE consultant, you defrauded the E-Rate program by, among other things, inflating consultant fees and bundling those charges with eligible services on invoices billed to DOE for work unrelated to Project Connect.[5] As a result of your scheme, DOE was fraudulently billed more than $3.6 million for Project Connect between 2002 and 2008, of which you profited approximately $1.7 million.[6] Pursuant to Section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the E-Rate program is the basis for this debarment.[7]

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the Notice of Suspension or of its publication in the **Federal Register**, whichever date occurred first.[8] The Commission did not receive any such opposition from you.

For the foregoing reasons, you are debarred from participating in activities associated with or related to the E-Rate program for three years from the Debarment Date.[9] During this debarment period, you are excluded from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[10]

Sincerely,

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email), Rashann Duvall, Universal Service Administrative Company (via email), Brian A. Jacobs, U. S. Attorney's Office, Southern District of New York (via email), Alvin L. Bragg, Jr., U. S. Attorney's Office, Southern District of New York (via email), Paul M. Krieger, U. S. Attorney's Office, Southern District of New York (via email)

[1] 47 CFR 54.8(g); *see also* 47 CFR 0.111 (delegating authority to the Enforcement Bureau to resolve universal service suspension and debarment proceedings).

[2] Letter from Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Willard Ross Lanham, Notice of Suspension and Initiation of Debarment Proceeding, 27 FCC Rcd 8384 (Enf. Bur. 2012) (Attachment 1).

[3] 77 Fed. Reg. 48154 (Aug. 13, 2012).

[4] Supra n. 2 at 2.

[5] *Id.* at 3.

[6] *Id.*

[7] 47 CFR 54.8(c).

[8] 47 CFR 54.8 (e)(3), (4). Any opposition had to be filed no later than August 26, 2012.

[9] *Id.* 54.8(e)(5), (g).

[10] *Id.* 54.8(a)(1), (5), (d).

[FR Doc. 2012–30105 Filed 12–12–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:29 a.m. on Tuesday, December 11, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Paul M. Nash, acting in the place and stead of Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: December 11, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30247 Filed 12–11–12; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, December 18, 2012 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–30209 Filed 12–11–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

Bisac Logistics, Inc. (NVO & OFF), 7685 NW. 80th Terrace, Medley, FL 33166, Officers: Hugo E. Martinez, Secretary (QI), Olga P. Martinez, President, Application Type: New NVO & OFF License.

Carlos A. Lastra Customhouse Broker Inc. (OFF), 10450 SW 140 Road, Miami, FL 33176, Officers: Carlos A. Lastra, President (QI), Patricia M. Lastra, Vice President, Application Type: New OFF License.

CMK Freight Forwarders, LLC (NVO & OFF), 1834 Harden Blvd., Lakeland, FL 33803, Officers: Steven C. Pniewski, Manager (QI), Manuel R. Echevarria, President, Application Type: New NVO & OFF License,

Global Wide Logistics, Inc. (NVO), 1937 Davis Street, Unit G, San Leandro, CA 94577, Officers: Mohammed N. Karimi, President (QI), Abdul Faizyar, Treasurer, Application Type: New NVO License.

ILE Global LLC (OFF), 181 S. Franklin Avenue, Suite 601, Valley Stream, NY 11581, Officers: Victor Pezzelato, Vice President Sales (QI), Orit Horn, Managing Member, Application Type: QI Change.

Matson Logistics Warehousing, Inc. (NVO & OFF), 1855 Gateway Boulevard, Suite 250, Concord, CA 94520, Officers: Michael T. Johnson, Vice President (QI), Rusty K. Rolfe, President, Application Type: Transfer to Matson Logistics, Inc. and QI Change.

Miami Freight Forwarders, LLC (OFF), 11397 NW 7th Street, Suite 202, Miami, FL 33172, Officers: Finees M. Casado, Manging Member (QI), Wilmag E. Casado, Member, Application Type: New OFF License.

Ocean Cargo Express Lines, LLC (NVO & OFF), 11892 Speekway Blvd., Hardeeville, SC 29927, Officer: Tamara Meadows, Member (QI), Application Type: QI Change.

PAI Logis Inc (NVO & OFF), 510 Plaza Drive, Suite 1880, College Park, GA 30349, Officers: Jung Sik Kong, Secretary (QI), Tae Hyun Roh, President, Application Type: New NVO & OFF License.

Pim Global Logistics, Inc. (NVO & OFF), 1140 E. Sandhill Avenue, Carson, CA 90746, Officer: Kelvin Coze, President (QI), Application Type: New NVO License.

Sea Star Line Caribbean, LLC (NVO), 10550 Deerwood Park Blvd., Suite 509, Jacksonville, FL 32256, Officers: William F. Taylor, Vice President (QI), Peter Keller, President, Application Type: New NVO License.

Sky Express World Courier, Inc. (NVO), 1740 S. Los Angeles Street, Suite 201, Los Angeles, CA 90015, Officers: Gyou H. Ahn, Secretary (QI), Hyoungtae Kim, CEO, Application Type: New NVO License.

Unigroup Worldwide, Inc. dba Brewster Lines (NVO & OFF), One Premier Drive, Fenton, MO 63026, Officers: John M. Hiles, Assistant Secretary (QI), Patrick G. Baehler, President, Application Type: QI Change.

United Van Lines International, Inc. (OFF), One United Drive, Fenton, MO 63026, Officers: John Hiles, Assistant Secretary (QI), Patrick G. Baehler, President, Application Type: QI Change.

Zoom Ocean Freight LLC (NVO), 2240 NW 114th Avenue, Miami, FL 33172, Officers: Georgina Barona, Manager (QI), Zonia B. De Atencio, Manager, Application Type: New NVO License.

By the Commission.

Dated: December 7, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–30040 Filed 12–12–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 021628F.
Name: A & S Shipping Company, Inc.
Address: 2759 NW. 82nd Avenue, Miami, FL 33122.
Date Reissued: October 25, 2012.

License No.: 022988N.
Name: World Class Solutions LLC.
Address: 3901 NW. 79th Avenue, Suite 230, Doral, FL 33166.
Date Reissued: November 8, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–30041 Filed 12–12–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority the implementation of the following information collection:

Report title: Retail Payments Surveys.

Agency form number: FR 3066a, b, c, and d.

OMB control number: 7100–0351.

Frequency: FR 3066a, b, and c: triennial (once every three years) and FR 3066d: annual and on occasion.

Reporters: Depository and financial institutions, payment networks, payment processors, and payment instrument issuers.

Estimated reporting hours: FR 3066a: 49,000 hours; FR 3066b: 1,040 hours; FR 3066c: 450 hours; FR 3066d: 400 hours.

Estimated average hours per response: FR 3066a: 35 hours; FR 3066b: 8 hours; FR 3066c: 3 hours; FR 3066d: 8 hours.

Estimated number of respondents: FR 3066a: 1,400; FR 3066b: 130; FR 3066c: 150; FR 3066d: 50.

General description of report: The Federal Reserve is generally authorized to collect the information called for by the FR 3066 series pursuant to sections

2A and 12A of the Federal Reserve Act. In addition, survey questions in the FR 3066 are authorized pursuant to the Board's authority under one or more of the following statutes:

- Expedited Funds Availability Act § 609 (12 U.S.C. 4008).
- Electronic Fund Transfer Act § 904 (15 U.S.C. 1693b) and § 920 (15 U.S.C. 1693o–2).
- Truth in Lending Act § 105 (15 U.S.C. 1604).
- The Check Clearing for the 21st Century Act § 15 (12 U.S.C. 5014).
- Federal Reserve Act § 11 (Examinations and reports, Supervision over Reserve Banks, and Federal Reserve Note provisions, 12 U.S.C. 248); § 11A (Pricing of Services, 12 U.S.C. 248a); § 13 (FRB deposits and collections, 12 U.S.C. 342); and § 16 (Issuance of Federal Reserve Notes, par clearance, and FRB clearinghouse, 12 U.S.C. 248–1, 360, and 411).

Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from savings and loan holding companies under (12 U.S.C. 1467a(b)(3) and 5412), from Edge Act and agreement corporations under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)), and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)).

Obligation to Respond: Voluntary.

Confidentiality: Respondents to the various surveys are requested to report confidential business information, such as information requested in the FR 3066a (for depository and financial institutions) about the number and value of deposits in various customer account types, image check deposits, paper check deposits, ACH entries, wire transfers, debit and prepaid card transactions, credit card transactions, mobile payments, and transactions involving third-party fraud. The other surveys request similar types of confidential ''number and value'' information appropriate to the surveyed entities. For example, the Network, Processor, and Issuer Payments Surveys (FR 3066b) request the number, value, and type of transactions involving credit cards (both general-purpose and private-label), debit cards, and prepaid cards from respondents (card networks, card processors, and retail merchants). Only aggregate totals from the surveys, such as estimated national volumes and trends in different types and categories of payments, check distribution, and established and emerging payment instruments, are proposed to be publicly released.

Under exemption 4 of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552(b)(4), ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' may be excluded from disclosure. The confidential business information collected voluntarily from individual respondents may be withheld, as release of such information would impair the Board's ability to collect such information in the future. Moreover, disclosure of such confidential business information could cause substantial competitive harm to the survey respondents. *See National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974).

Abstract: The voluntary Retail Payments Surveys are designed to collect information needed to support the Federal Reserve System's role in the retail payments system.[1] The FR 3066a and the FR 3066b collect information on the national volume (number and value) of major categories and subcategories of established and emerging methods of noncash payment from a nationally representative, stratified random sample of depository institutions and from a census of payments networks, processors, and issuers, respectively. These two surveys also collect information on trends in different business arrangements and technologies connected with the initiation, authorization, collection, and processing of payments. In addition, the FR 3066a collects the volumes of bank customers' cash withdrawals and deposits at retail branches, wholesale vaults, and automated teller machines (ATMs). The FR 3066b collects information on cash substitution, such as the distribution of low-value purchases made with noncash instruments and the loading of cash onto other payment instruments.

The FR 3066c collects data from samples of individual checks obtained from a sample of depository institutions.[2] The FR 3066d collects payment volumes similar to those collected in the FR 3066a or the FR 3066b from a subset of respondents to obtain information about changes in volumes that may occur in the two years between triennial surveys.

In general, the FR3066a, b, and c surveys will be distributed in the first quarter of2013, and data collection will primarily take place during the second quarter 2013.

Current Actions: On September 6, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 54912) requesting public comment for 60 days on the implementation of the FR 3066a, b, c, and d. The comment period for this notice expired on November 5, 2012. The Federal Reserve received four comment letters addressing the proposed implementation of this information collection, which are summarized and addressed below.

Summary Discussion of Public Comments and Responses

The Federal Reserve received written comments from one financial institution, one merchant trade association, one payment card network, and one payment industry association. All commenters supported the data collection effort, and noted that the information is widely used by payment system participants as a benchmark and to gain insights into payment system trends. Commenters believed that providing the data requested in the surveys would generally not be burdensome to respondents.

At the Federal Reserve's request, contractors assisting with the survey design conducted industry outreach calls to obtain additional insights into the clarity of the survey forms and the feasibility of providing the requested data items. Institutions represented in the calls included financial institutions, networks, and processors of several types and sizes.

The detailed discussion in this notice addresses the specific substantive issues that arose from the written comments

[1] While the Federal Reserve is involved with both retail and wholesale payments, these surveys are designed to collect information on retail payments and the systems or networks that are primarily used to make retail payments. Retail payments are generally for relatively small dollar amounts and often involve a depository institution's retail clients—individuals, businesses, and governments. Wholesale payments are generally for relatively large dollar amounts, and often involve a depository institution's large corporate customers or counterparties, including other financial institutions. Wholesale payments are not the main focus of the surveys, but may be included in cases where there is a need.

[2] This survey is similar to the Check Sample Studies, part of the Federal Reserve Payments Study (FRPS), conducted by the Retail Payment Office (RPO) in 2001, 2007, and 2010. As with past studies, copies of checks or any information that would identify payers or payees on the checks would not be retained or used for any purpose other than estimating the aggregate proportions of different types of checks.

and the industry outreach calls, and modifications to the surveys in response to the comments. In addition to the modifications discussed below, minor clarifications will be made to the surveys in response to the comments.

Detailed Discussion of Public Comments and Response

Depository and Financial Institution Payments Survey (FR 3066a)

General Comments

The Federal Reserve specifically requested comment on whether reporting data for March 2013 was more feasible and/or useful than reporting data for another period such as March and April 2013 combined. One commenter specifically noted that reducing the number of months of data from two consecutive months to one (as compared with the 2010 version of the survey) would simplify the response process, but have no substantial effect on the quality or validity of the data provided. If, as proposed, only March data were collected, another commenter urged the Federal Reserve to maintain comparability with previous surveys by accounting for the seasonality in card data when annualizing estimates from the survey. The Federal Reserve believes that the reduction in the complexity provided by reporting one month rather than two months of data will help maintain high response rates, and offset the increased complexity of the survey compared with the 2010 version, and will use the available information to ensure comparability with previous studies.

The Federal Reserve plans to help respondents prepare for data submission by engaging a contractor to assist with several voluntary interactive survey training sessions where respondents will be invited to ask clarifying questions or discuss their own data-reporting circumstances. Based on these sessions, the FR 3066 information collection will continue to be clarified and a frequently asked questions document will be developed.

Section-by-Section Analysis of Substantive Comments

Customer Accounts

This section contains questions about the number and value of transaction deposit accounts, prepaid card program accounts, and credit card accounts, as well as the number of debit, prepaid and credit cards outstanding. Some commenters noted that various sections of the survey would be distributed to several different business lines within their institution and, in order to more readily associate the account and card data to the related transaction data, suggested that these questions be moved to account specific sections of the survey. The Federal Reserve will implement this suggestion.

The Federal Reserve specifically requested comment on how institutions refer to ''full service'' transaction deposit accounts (e.g. checking accounts, debit card accounts, etc.) to distinguish them from prepaid card accounts. One commenter noted that the main distinguishing factor for prepaid versus full service is unlimited check writing ability on a full service account. Based on this comment and others, the Federal Reserve will clarify the definition of prepaid card accounts compared with other types of accounts.

The Federal Reserve also specifically asked for comment on whether it is more feasible and/or useful to ask for the number of active cards outstanding or the number of accounts with recent card activity for credit card, debit card, and prepaid card accounts. Several commenters generally believed that it was most relevant to request the number of eligible and active cards outstanding rather than the number of accounts with cards outstanding. The Federal Reserve will modify the survey to request the number of ''cards in force'' and active cards for credit cards, debit cards, and prepaid cards.

One commenter requested that information on the total number of cards in force with embedded chip technology would be valuable to the industry. The Federal Reserve will modify the survey to collect a count of the number of cards outstanding that have chip technology for credit cards, debit cards, and prepaid cards.

The Federal Reserve specifically asked for comment on the most feasible and/or useful time period over which a payment card account should have payment or transaction activity to be considered active as well as what kinds of transactions, if any, should not be counted toward activity. One commenter suggested that the definition of an active card for debit and prepaid cards—which would include purchases, but not cash withdrawals—should be 30 days, while the credit card activity definition—which potentially would include purchases and balance transfers—should be 90 days due to the lower activity, in general, of credit cards. The Federal Reserve notes that the definition of an active card for debit, prepaid, and credit cards in this survey should be based on whether the card was used for a payment transaction (as defined in the survey form) during the 31-day survey period of March 2013. This approach allows for consistency of definition across cards, and also allows for the calculation of the number of payments per active card during the survey period.

Check Deposits

Some commenters expressed interest in understanding the number and value of consumer checks deposited remotely via a mobile device and believed it was feasible to do so. The Federal Reserve will add ''checks deposited via mobile device'' and ''other'' as subsets of data under item 7a.1.1 ''consumer client image capture'' to allow the reporting of this item. However, similar additional subsets will not be requested for business/government or correspondent checks.

ACH

The Federal Reserve specifically requested comment on whether including a breakout of ACH volumes (number and value) into subcategories needed to identify interbank ACH payments would help to avoid double-counting correspondent ACH volumes. Based on comments received, the Federal Reserve will add a check box question on whether the responding institution processes ACH payments for another institution.

Outreach discussions raised a number of issues concerning the measurement of total ACH payments in the presence of several different practices involving the use of offset entries. In response, the Federal Reserve will add three check box questions to help account for and identify the prevalence of these different practices.

Wire Transfers

The Federal Reserve specifically requested comment on whether institutions can separate wire transfer origination volumes (number and value) by consumer and business/government customers. Some commenters stated that settlement transfers (including some ''bank business'' wires) would be included in the business wire category and should be listed in a separate subcategory. The Federal Reserve will include the subsets of ''settlement'' and ''other'' under business wire transfers.

Some commenters noted that allocating wire transfers to consumer and business categories would be a manual process and subject to error (e.g., some financial institutions might categorize some small-business wires as consumer wires and others as business/government wires). The Federal Reserve realizes that respondents' ability to separate wires by type vary across institutions and will instruct respondents answer items they cannot measure as ''not reportable'' (''NR''). While some wires may be difficult for respondents to categorize, the responses in aggregate should provide a clearer measure of wire usage than what is currently available.

The Federal Reserve also specifically requested comment on whether institutions can separate wire transfer origination volumes (number and value) between domestic and foreign wire transfers. No commenters suggested that such a separation would be infeasible or burdensome. In addition, some outreach discussions identified an interest in measuring consumer cross-border payments. To address this interest, the Federal Reserve will create subsets of ''consumer'' and ''other'' transactions under ''foreign wire transfers.''

Debit and Prepaid Cards

One commenter stated that it could report cash back transactions for debit cards overall, but was not able to identify cash back from prepaid card transactions from other debit card transactions. The Federal Reserve will modify the survey so that respondents report cash back transactions for debit cards in the aggregate and enter NR in cases where data are unavailable.

Cash

Industry outreach discussions identified an interest in the number of remote currency management terminals (''smart safes'') and the number and value of deposit transactions that are associated with them. The Federal Reserve will include a section on Currency Management Terminals with six quantitative data items to accommodate reporting of this information. These terminals are relatively rare but are becoming more prevalent in the currency management industry. Most respondents likely will not be involved with these new terminals, and will be able to just enter ''0'' for these new data items.

Unauthorized Transactions (Third-party Fraud)

The Federal Reserve specifically requested comment on whether institutions can report information on unauthorized transactions, as defined, or whether another definition of third-party fraud would be more feasible and/or useful to report. One commenter was interested in the collection of more details on the types of fraud, suggesting a collection of stratified fraud categories. In weighing the inclusion of a fraud category, the Federal Reserve tried to balance the value of detailed information against the burden and feasibility of obtaining details on fraud. There are many ways to categorize fraud, and institutions follow differing methods of tracking it. While recognizing the importance of the other types of fraud (such as first-party fraud) which the survey does not measure, the Federal Reserve will not make any changes to this section, which quantifies one broad and important type of payment fraud.

One commenter was concerned that the definition of ''unauthorized payments'' may not capture chargebacks, often initiated by the cardholder, and which may require payees or their agents to spend significant time and resources to validate the charge. While the Federal Reserve recognizes that the burden imposed by non-fraudulent chargebacks can be a significant concern for particular merchants, they do not necessarily constitute third-party fraud and should not be reported in this survey unless linked to an unauthorized transaction determined to be third-party fraud. Other surveys are designed to address some of these issues more fully and the Federal Reserve believes that this particular survey is not the proper forum to address chargebacks.

Network, Processor, & Issuer Payments Surveys (FR 3066b)

General Comments

Based on an evaluation of written comments and information gathered from industry outreach calls, the Federal Reserve will modify the survey forms with several minor definitional and reorganizational changes. One change designed to ease the burden for certain items that may be unavailable are check boxes to allow respondents to indicate that the item is not tracked by the organization. Other general changes include revisions to create better consistency across forms.

One commenter suggested using the definition of a ''general-use prepaid card'' of Regulation II to define a prepaid card account for the network surveys. The Federal Reserve will keep the surveys consistent with this basic definition where applicable. In addition, for private label prepaid cards which are not for general use or for other cards that may not be covered by Regulation II, the definitions will be adapted as appropriate to maintain consistency.

One commenter requested that information be collected on the number and value of chargebacks and the number of cards outstanding that include chip technology. The Federal Reserve will add a field for the number and value of chargebacks as a subset of ''adjustments and returns'' for the relevant card networks. In addition, the Federal Reserve will request a count of the number of cards outstanding that have chip technology in the appropriate surveys.

The Federal Reserve specifically requested comment on whether card networks can report cash advances received in physical cash form as a subset of total cash advances. (Total cash advances include not only physical cash advances but also other funds transfers such as an electronic transfer to a transaction deposit account or a payment made with credit account funds using a special check issued to the cardholder). One commenter noted that a particular network could report physical cash back from a bank teller or ATM, but could not report other types of cash advances. Industry outreach discussions with other networks reflected a similar position. Because it is the most feasible category, the Federal Reserve will revise the forms to ensure that physical cash back from ATMs and bank tellers may be reported as a separate line item for the relevant payment types.

The Federal Reserve specifically requested comment on the most feasible and/or useful time period over which various payment instruments should have payment or transaction activity to be considered active, as well as what kinds of transactions, if any, should not be counted toward activity. The Federal Reserve will use the definition of active as cards with any transaction activity during the survey reference period (calendar year 2012) as proposed, for consistency with previous surveys.

The Federal Reserve specifically requested comment on categorizations of payments that would be the most useful or feasible for respondents to report. Based on industry outreach discussions, the Federal Reserve will add one or two categorizations of payments (such as procurement and fleet card accounts under private-label credit card) to increase the clarity of the survey forms. In addition, the Federal Reserve would, in a few cases, adjust volume subcategories to ensure that the most relevant categories are included for each of the specific types of payments. In some cases this would mean the addition of a line item, and in others it would mean the removal of a line item. For example, in the case of the signature debit survey, a line item for ''PINless debit (i.e., bill pay to a utility)'' may be added. In another example, the line item for ''cash back'' may be removed from the general purpose credit card survey. In a further example, ''direct send/ consolidator (i.e., Fiserv/CheckFree) may be added to the online bill payment survey.

Board of Governors of the Federal Reserve System, December 10, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–30094 Filed 12–12–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR Part 238) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 28, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Ellen Records Morgan,* Oklahoma City, Oklahoma; as co-trustee of the Martha E. Records 2009 GST Exempt Family Trust; the Martha E. Records 2009 Non-Exempt Family Trust; the Kathryn R. Ryan 2007 GST Exempt Family Trust; and the Kathryn R. Ryan 2007 Non-Exempt Family Trust, all of Oklahoma City, Oklahoma, to acquire voting shares of Midland Financial Co., and thereby indirectly acquire voting shares of MidFirst Bank, both in Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, December 10, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–30074 Filed 12–12–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 2012–29742) published on page 73467 of the issue for Monday, December 10, 2012.

Under the Federal Reserve Bank of Richmond heading, the entry for Live Oak Bancshares, Inc., Wilmington, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Live Oak Bancshares, Inc.,* Wilmington, North Carolina; to acquire 100 percent of the voting shares of Government Loan Solutions, Inc., Cleveland, Ohio, and engage in providing support services in connection with the settlement, accounting, and securitization processes for government guaranteed loans, including loans originated under the U.S. Small Business Administration loan programs and USDA loans; and thereby indirectly acquire 51 percent of the voting shares of Secondary Market Access, LLC, Cleveland, Ohio, and thereby engage in activities related to extending credit, investment advisory, management consulting, and data processing activities, pursuant to sections 225.28(b)(1); (b)(2), (b)(6); (b)(9), and (b)(14), all of Regulation Y.

Comments on this application must be received by December 26, 2012.

Board of Governors of the Federal Reserve System, December 10, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–30073 Filed 12–12–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0297; Docket No. 2012–0001; Sequence 26]

Information Collection; Proposed Collection; Comment Request; General Services Administration Acquisition Regulation; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (GSA)

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for comments regarding an existing information collection.

SUMMARY: As part of a Federal Government wide effort to streamline the process to seek feedback from the public on service delivery, the General Services Administration (GSA) will be submitting a renewal to the Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: Submit comments on or before February 11, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0297'', Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0297'', Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0297'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. Attn: Hada Flowers/IC 3090–0297, Generic Clearance.

Instructions: Please submit comments only and cite Information Collection 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417; telephone (202)501–4755.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Digital Government Strategy released by the White House in May 2012 drives agencies to have a more customer-centric focus. Because of this, GSA anticipates an increase in requests to use this generic clearance as the plan states that: a customer-centric principle charges us to do several things: conduct research to understand the customer's business, needs and desires; ''make content more broadly available and accessible and present it through multiple channels in a program- and device-agnostic way; make content more accurate and understandable by maintaining plain language and content freshness standards; and offer easy paths for feedback to ensure we continually improve service delivery. The customer-centric principle holds true whether our customers are internal (*e.g.,* the civilian and military federal workforce in both classified and unclassified environments) or external (*e.g.,* individual citizens, businesses, research organizations, and state, local, and tribal governments).''

Below we provide GSA's projected average estimates for the next three years:

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 48.

Respondents: 145,534.

Annual Responses: 48,511.

Frequency of Response: 1.

Average minutes per response: 3.82.

Burden hours: 9,314.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: December 5, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–29989 Filed 12–12–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–276]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of ten final toxicological profiles of priority hazardous substances prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Grant, Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, Mailstop F–57, 1600 Clifton Road NE., Atlanta, Georgia 30333; telephone number (800) 232–4636 or (770)488–3351. Electronic access to these documents is available at the ATSDR Web site: *www.atsdr.cdc.gov/toxprofiles/index.asp.*

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances (also called the Substance Priority List). This list identifies 275 hazardous substances that ATSDR (in cooperation with EPA) has determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on November 3, 2011 (76 FR 68193) and is available at *www.atsdr.cdc.gov/spl.* In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List, in an effort to ''* * * establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

Notice of the availability of these toxicological profiles in draft form for public review and comment was published in the **Federal Register** on November 6, 2008 (73 FR 66047) and December 17, 2009 (74 FR 66978), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and, where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control numbers ATSDR–247, ATSDR–256. This material is available for public inspection at ATSDR.

Availability

This notice announces the availability of three new and seven updated final toxicological profiles of priority hazardous substances prepared by ATSDR. The following final toxicological profiles were made available to the public on December 7, 2012. These documents are available at the ATSDR Web site: *www.atsdr.cdc.gov/toxprofiles/index.asp*.

Toxicological profile	CAS No.
1. Acrylamide	79–06–1
2. 1,3-Butadiene	106–99–0
3. Cadmium	7440–43–9
4. Carbon Monoxide	630–08–0
5. Chromium	7440–47–3
6. 1,4-Dioxane	123–91–1
7. Manganese	7439–96–5
8. Phosphate Ester Flame Retardants	78–51–3
	126–73–8
	126–71–6
	115–86–6
	13674–84–5
	13674–87–8
	115–96–8
9. Radon	10043–92–2
10. Vanadium	7440–62–2

The final profiles are also available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553– 6847. These profiles are available for a fee as determined by NTIS.

Dated: December 6, 2012.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry.

[FR Doc. 2012–30087 Filed 12–12–12; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[CDC–2012–0012; NIOSH–254]

Request for Information on Edel-Kindwall Caisson Tables for Preventing Decompression Illness in Construction Workers

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) invites comments and information on decompression tables used for protecting tunneling (caisson) workers from developing decompression illnesses.

Public Comment Period: Comments must be received by March 29, 2013.

ADDRESSES: Written comments, identified by CDC–2012–0012 and docket number NIOSH–254, may be submitted by any of the following methods:

- *Federal erulemaking portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Email: nioshdocket@cdc.gov*.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. The document and instructions for submitting comments can be found at: *http://www.regulations.gov*. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to CDC 2012–0012 and docket number NIOSH–254.

FOR FURTHER INFORMATION CONTACT: Frank J. Hearl, PE, Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Patriots Plaza, Suite 9200, 395 E St. SW., Washington, DC 20201. Telephone: (202) 245–0625 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: High pressure tunneling operations are used for some underground infrastructure projects. Compressed air is used to prevent seepage of water or to stabilize unstable soil conditions. Caisson work (a water-tight structure that allows underwater construction to be performed) can also involve elevated pressure worksites. This hyperbaric environment created by ambient pressure and compressed air effects exposes caisson and tunnel workers to the risks of decompression sickness (DCS) such as the ''bends.'' DCS is related to intravascular or extravascular bubbles formed during reduction of environmental pressure (decompression). The release of nitrogen bubbles into blood or tissues can result in obstruction of blood flow or pressure effects. Clinical manifestations of DCS include (but are not limited to) joint pain (''bends''), lytic lesions of bones (dysbaric osteonecrosis), cutaneous disorders (cutis marmorata), spinal cord and brain disorders (stroke, paralysis, paresthesias, bladder dysfunction, etc.), and cardiopulmonary disorders (shortness of breath ''chokes''), arterial gas embolism.

In order to prevent DCS, workers in higher hyperbaric environments must be safely brought back to the non-work environmental ambient pressure (decompressed) in decompression areas.

Decompression tables generally utilize stepwise (staged) progressions of gradually decreasing pressure at varying time intervals based on work exposure pressures and length of work shift.

In 1971, the Washington State Decompression Tables that were used in multiple states became the federal code enforced by the Occupational Health and Safety Administration (OSHA) and remain, unchanged, as the decompression tables in force today. The maximum worksite pressures allowed by OSHA (1926 Subpart S, Appendix A) and addressed by the OSHA decompression tables is 50 pounds per square inch (psi) (~3.45 bar gauge) [1]. They are considered inadequate for ''efficiently eliminating nitrogen from the body'' at pressures in excess of 36.5 psi [2].

The Edel-Kindwall Caisson Tables were developed for NIOSH in 1981. They are based on advances in hyperbaric research and are considered to be more protective of worker health than the OSHA tables. As a result, these tables have been used for variances to the OSH standard. NIOSH is making these tables more easily accessible to construction users by posting them to a new Web page at the NIOSH Web site at *http://www.cdc.gov/NIOSH/topics/Decompression/*.

However, the Edel-Kindwall tables are inadequate for dealing with pressures greater than 50 psi. Many modern projects using Tunnel Boring Machines involve pressures greater than 50 psi. There is a need for up-to-date decompression tables.

NIOSH is thus requesting information on the following: (1) Information on types of projects where the Edel-Kindwall Tables have been used, (2) Published and unpublished reports and findings relating to the use of the Edel-Kindwall Tables, including information on possible health effects or lack of observed health health effects in tunnel/caisson workers who were decompressed with data from the Edel-Kindwall Tables,(3) Information on related control measures (e.g., engineering controls, work practices, personal protective equipment) in use in workplaces where decompression is required, and (4) Information on alternative tables and approaches being used to protect tunneling workers from higher pressures greater than 50 psi.

References

1. Hamilton RW, Bill Kay E. (2008) *Boring deep tunnels. Third conference on U.S.-Japan panel on aerospace-diving physiology & technology and hyperbaric medicine.*
2. Downs GJ, Kindwall EP. (1986) Aseptic necrosis in caisson workers: A new set of decompression tables. *Aviat Space & Environ Med* 57:569–574.

Dated: December 4, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–30080 Filed 12–12–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–238]

Issuance of Final Guidance Publication

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of final guidance publication.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces the availability of the following publication: NIOSH Alert entitled ''Preventing Occupational Respiratory Disease from Exposures Caused by Dampness in Office Buildings, Schools, and Other Nonindustrial Buildings'' *[2013–102].*

ADDRESSES: This document may be obtained at the following link:

• *Web site: http://www.cdc.gov/niosh/docs/2013-102/.*

FOR FURTHER INFORMATION CONTACT: Michelle R. Martin, M.S., NIOSH/CDC, 1095 Willowdale Road, Morgantown, WV 26505, telephone (304) 285–5734, email *mrmartin1@cdc.gov.*

Dated: December 4, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–30081 Filed 12–12–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0429]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 14, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products.'' Also, include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products—(OMB Control Number 0910–NEW)

This guidance is intended to assist tobacco manufacturers, importers, researchers, and investigators, and their representatives who seek meetings with staff of FDA's Center for Tobacco Products (CTP) relating to their plans to conduct research to inform the regulation of tobacco products or support the development or marketing of tobacco products. This guidance does not pertain to other types of meetings or meeting requests with CTP staff. The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) offers tobacco product manufacturers several pathways to obtain an order from FDA to authorize the marketing of a tobacco product before it may be introduced or delivered into interstate commerce. To provide assistance with these pathways to market particular products, FDA will meet with tobacco product manufacturers, importers, researchers, and investigators (or their representatives) where appropriate. This guidance is intended to assist persons who seek guidance relating to their research to inform the regulation of tobacco products, or to support the development or marketing of tobacco products. In the guidance, the Agency discusses, among other things:

• What information DA recommends persons include in such a meeting request;

• How and when to submit such a request; and

• What information FDA recommends persons submit prior to such a meeting.

In the **Federal Register** of May 25, 2012 (77 FR 31368), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one response containing PRA-related comments.. The comment indicated that the guidance should clarify that meeting request times will vary depending on the type of submission to be discussed and the meeting information package requirements should be tailored to the submission type.

In response, the estimated burden hours for both meeting requests and meeting information package requirements have been calculated by FDA and are based on an average number of hours for each type of submission over a 3-year period. The meeting information requirements are also averaged together and are not individually split into submission types for this collection. The commenter also provided comments that were not PRA-related and are beyond the scope of this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Meeting requests and information packages	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Meeting Requests					
Combining and sending meeting request letters for manufacturers, importers, and researchers	67	1	67	10	670
Meeting Information Packages					
Combining and submitting meeting information packages for manufacturers, importers, and researchers.	67	1	67	18	1,206
Collection Totals					1,876

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents for meeting requests in table 1 of this document is based on the number of meeting requests to be received over the next three years. In year 1 of this collection, FDA estimates that 50 preapplication meetings will be requested. In year 2, FDA estimates that 100 meetings will be requested, especially as applications and reports for substantial equivalence, etc., are received and acted upon. Once the public knows more about submitting these applications in year 3 three, the request for meetings is expected to drop back to the year 1 one rate of 50 per year. Thus, FDA estimates the number of manufacturers, importers, researchers, and investigators who are expected to submit meeting requests in table 1 of this document to be 67 (50 year 1 requests + 100 year 2 requests + 50 year 3 requests divided by 3). The hours per response, which is the estimated number of hours that a respondent would spend preparing the information recommended by the guidance to be submitted with a meeting request, is estimated to be approximately 10 hours each, and the total burden hours are 670 hours (10 hours preparation/mailing times 67 average respondents per year). Based on FDA's experience, the Agency expects it will take respondents this amount of time to prepare, gather, copy, and submit brief statements about the product and a description of the purpose and details of the meeting.

FDA's estimate of the number of respondents for compiling meeting information packages in table 1 of this document is based on 67 respondents each preparing copies of their information package and submitting them to FDA, for a total of 1,206 hours annually. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package as recommended by the guidance, is estimated to be approximately 18 hours per information package. Based on FDA's experience, the Agency expects that it will take respondents 1,206 hours of time (67 respondents times 18 hours) to gather, copy, and submit brief statements about the product, a description of the details of the anticipated meeting, and data and information that generally would already have been generated for the planned research and/or product development. The total number of burden hours for this collection of information is 1,876 hours (670 hours to prepare and submit meeting requests and 1,206 hours to prepare and submit information packages).

Dated: December 7, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30057 Filed 12–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1161]

Draft Guidance for Industry and Food and Drug Administration Staff; Design Considerations for Devices Intended for Home Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Design Considerations for Devices Intended for Home Use.'' This document is intended to assist manufacturers in designing and developing home use medical devices that comply with applicable standards of safety and effectiveness and other regulatory requirements. Home use devices are associated with unique risks created by the interactions among the user (often a layperson), the use environment, and the device. This document identifies several factors that manufacturers should consider, especially during device design and development, and provides recommendations for reducing or minimizing these unique risks. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 13, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Design Considerations for Devices Intended for Home Use'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for

Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For information concerning the guidance as it relates to devices regulated by CDRH: Mary Brady, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5426, Silver Spring, MD 20993–0002, 301–796–6089.

For information concerning the guidance as it relates to devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

I. Background

For a variety of reasons, use of devices outside professional healthcare facilities or clinical laboratories is on the rise. First, the U.S. population is aging, and the elderly are more likely to live with chronic diseases that require daily medical care at home. Second, due to medical advancements, many individuals with chronic diseases are living longer, but are dependent on home medical care. Finally, an increasing focus on reducing healthcare costs for patients of all ages has spurred the growth of the home health care market. Integral to the home health care market are home use devices. Although home use devices provide significant benefits to patients and families, including quality of life improvements and cost savings, home use devices are also associated with unique risks. Reducing or minimizing the risks posed by home use devices can greatly improve the public health.

This draft guidance provides recommendations for designing and developing medical devices intended for home use through considerations involving the physical environment, the user, the device or system, the labeling, and the utilization of human factors. This should result in a safe and easier-to-use device, minimize use error, and reduce the likelihood that adverse events will occur. The recommendations in the guidance apply to both prescription and over-the-counter medical devices that are intended for home use.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the total product life cycle for devices intended for home use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive ''Design Considerations for Devices Intended for Home Use'' from CDRH, you may either send an email request to dsmica@fda.hhs.gov to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1750 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in Form FDA 3500A have been approved under OMB control number 0910–0291.

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: December 5, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30033 Filed 12–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1005]

Draft Guidance for Industry on Safety Considerations for Product Design To Minimize Medication Errors; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Safety Considerations for Product Design to Minimize Medication Errors.'' The draft guidance provides sponsors of investigational new drug applications, new drug applications, biologics licensing applications, abbreviated new drug applications, and nonprescription drugs marketed without an approved application (e.g., monograph) with a set of principles for developing drug products using a systems approach to minimize medication errors relating to product design. The draft guidance includes recommendations intended to improve the drug product and container closure design at the earliest stages of product development for all prescription and nonprescription drug products.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 11, 2013.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carol Holquist, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4416, Silver Spring, MD 20993–0002, 301–796–0171.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ‘‘Safety Considerations for Product Design to Minimize Medication Errors.’’ In Title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), Congress reauthorized and expanded the Prescription Drug User Fee Act program for fiscal years (FYs) 2008 through 2012 (PDUFA IV). As part of the performance goals and procedures set forth in an enclosure to the letter from the Secretary of Health and Human Services referred to in section 101(c) of FDAAA, FDA committed to certain performance goals and procedures. (See *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm*). In that letter, FDA stated that it would use fees collected under PDUFA to implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Among these measures, FDA agreed that by the end of FY 2010, after public consultation with academia, industry, other stakeholders, and the general public, the Agency would publish draft guidance describing practices for naming, labeling, and packaging drugs and biologics to reduce medication errors. On June 24 and 25, 2010, FDA held a public workshop and opened a public docket (Docket No. FDA–2010–N–0168) to receive comments on these measures.

This draft guidance document, which addresses safety achieved through drug product design, is the first in a series of planned guidance documents to minimize risks contributing to medication errors. The second guidance will focus on minimizing risks with the design of drug product container labels, carton labeling, and packaging configurations, and the third guidance will focus on minimizing risks with drug product nomenclature.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on addressing safety achieved through drug product design to minimize medication errors. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: December 7, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30034 Filed 12–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Friday, December 7, 2012 (77 FR 73034). The product name in the document was incorrect. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5290, *Natasha.Facey@fda.hhsgov.*

SUPPLEMENTARY INFORMATION: In FR doc. 2012–29538, appearing on page 73034 in the **Federal Register** of Friday, December 7, 2012, the following correction is made:

1. On page 73034, in the second column under the section entitled ‘‘Agenda’’, the product name ‘‘NeuroPace Responsive Neurostimulation (RNS) System’’ is corrected to read ‘‘NeuroPace RNS System’’.

Dated: December 7, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–30024 Filed 12–12–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: January 24, 2013.

Open: January 24, 2013, 8:30 a.m. to 2 p.m.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Closed: January 24, 2013, 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and to review the activities of the NIMH Division of Intramural Research Programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 7, 2012.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30009 Filed 12–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Environmental Health Sciences Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 20, 2013.

Open: 8:30 a.m. to 4:35 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Date: February 21, 2013.

Open: 8:30 a.m. to 9:30 a.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: 9:45 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research & Training, National Institute of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30013 Filed 12–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel HIV Pathogenesis.

Date: December 12, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30015 Filed 12–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetics of Cancer and Hypertension.

Date: January 11, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 7, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30014 Filed 12–12–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0029; OMB No. 1660–0098]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Citizen Corps Council Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Citizen Corps Council Registration.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0098.

Form Titles and Numbers: FEMA Form 646–0–10ONL, Citizen Corps Council Registration.

Abstract: FEMA's Community Preparedness Division would like to renew a currently approved collection for its registration of State, local, Tribal and territorial Councils and Community Emergency Response Teams. The registration process allows for new Councils to submit information on the Council or CERT to the State Citizen Corps Program Manager for approval. The revised registration process will allow for the collection of more valuable information and the tool is more user-friendly for Citizen Corps Councils and CERT's.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 3,750.

Number of Responses: 7,500.

Estimated Total Annual Burden Hours: 7,500 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $194,250.00. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $377,030.00.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–30141 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3356–EM; Docket ID FEMA–2012–0002]

Pennsylvania; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Pennsylvania (FEMA–3356–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 8, 2012.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–30157 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3357–EM; Docket ID FEMA–2012–0002]

Delaware; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Delaware (FEMA–3357–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* November 8, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 8, 2012.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–30151 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4085–DR; Docket ID FEMA–2012–0002]

New York; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4085–DR), dated October 30, 2012, and related determinations.

DATES: *Effective Date:* November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 30, 2012.

Orange, Putnam, Sullivan, and Ulster Counties for Public Assistance, including direct federal assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–30154 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4091–DR; Docket ID FEMA–2012–0002]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland (FEMA–4091–DR),

dated November 20, 2012, and related determinations.

DATES: *Effective Date:* December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 20, 2012.

Anne Arundel, Cecil, and Prince George's Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–30156 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: National Explosives Detection Canine Team Program (NEDCTP) Handler Training Assessment Survey (Formerly Named: Graduate Training Feedback Form)

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0041, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the electronic submission of numerical ratings and written comments about the quality of training instruction from students who graduate from the Federal Air Marshal Service (FAMS)/Canine Training and Evaluation Section (CTES) Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars.

DATES: Send your comments by February 11, 2013.

ADDRESSES: Comments may be emailed to TSAPRA@dhs.gov or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan L. Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0041; National Explosives Detection Canine Team Program (NEDCTP) Handler Training Assessment Survey (formerly named: Graduate Training Feedback Form). The FAMS/CTES Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars are given to state and local personnel as well as TSA personnel who are trained to be canine handlers. The state and local personnel participate under agency specific cooperative agreements in that portion of the the TSA Grant program administered by the National Canine Program (NCP). The Handler Training Assessment Survey captures from graduating students numerical ratings and written comments about the quality of training instruction at the FAMS/CTES Explosives Detection Canine Handlers Course, Passenger Screening Canine Handler Course and the Supervisor/Trainer Seminars. The data is collected electronically through the NCP Canine Web site (a secure Web site accessible by authorized personnel only) and provides valuable feedback to the Supervisory Agent in Charge (SAC), CTES, instructional staff and supervisors on how the training material was presented and received. The Assessment Surveys are mandatory for students who successfully complete training, but the students may remain anonymous. Once reviewed, the feedback is used to improve the course curriculum and course of instruction. The estimated burden is approximately one hour per participant, 180 hours per calendar year (average 180 students per calendar year) to read, answer, and submit the questions.

Issued in Arlington, Virginia, on December 6, 2012.

Susan L. Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–29988 Filed 12–12–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Customs Brokers User Fee Payment for 2013

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 15, 2013. U.S. Customs and Border Protection announces this date of payment for 2013 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2013 Customs Broker User Fee is due February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Craig Briess, Broker Compliance Branch, Trade Policy and Programs, (202) 863–6083.

SUPPLEMENTARY INFORMATION:

Background

CBP Dec. 07–01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007, an annual user fee of $138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

U.S. Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. See 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, ''Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts'' published in the **Federal Register** on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* (Pub. L. 107–296) and Treasury Department Order No. 100–16 (see Appendix to19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2013, the due date for payment of the user fee is February 15, 2013. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on the first business day following the nineteenth of January of each year.

Dated: December 6, 2012.

Allen Gina,

Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection.

[FR Doc. 2012–30150 Filed 12–12–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N295; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by January 14, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–123456).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number in the subject line of the message.
- *U.S. Mail:* Kris Olsen, Permit Coordinator, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call 303–236–4256 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator, Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing this permit.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicant to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information the applicants have submitted is available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–704930

Applicants: Michael Thabault and Nicole Alt, U.S. Fish and Wildlife Service, Region 6. Ecological Services, Denver, Colorado.

The applicants request renewal of an existing permit to purposefully take (display, photograph, harass by survey, capture, electrofish, handle, weigh, measure, mark, obtain biological samples, breed in captivity, reintroduce, relocate, remove from the wild, kill, and, for plant species only, remove and reduce to possess) all threatened and endangered species listed in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming for recovery or scientific purposes or for the enhancement of propagation or for enhancing the species' survival. This permit will allow Fish and Wildlife Service employees and volunteers to lawfully conduct threatened and endangered species activities, in conjunction with recovery activities throughout the species' range, as outlined in Fish and Wildlife Service employees' and volunteers' position descriptions.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in this permit are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: December 5, 2012.

Nicole Alt,

Acting Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–30079 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2012–N266; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9 a.m. to 5 p.m. on Thursday, January 10, 2013, and from 8:30 a.m. to 12:30 p.m. on Friday, January 11, 2013.

ADDRESSES: The meeting will be held at the Shasta College Trinity Campus, 30 Arbuckle Court, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Nancy J. Finley, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; email: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- Designated Federal Officer (DFO) updates,
- TMC Chair report,
- Executive Director's report,
- TMC Chair report,
- Budget update,
- Update from TRRP Workgroups,
- Phase 1 Review,
- 2013 Design update,
- Watershed update,
- 2012 Temperature Workgroup Products,
- Gravel presentation study and discussion on 2013 recommendation, and
- TAMWG's mission statement.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: December 6, 2012.

Nancy Finley,

Field Supervisor, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2012–30077 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000.L11200000.PH0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho on January 22–23, 2013 for a two day meeting. The first day will be new member orientation in the afternoon starting at 2:00 p.m. at the Idaho Falls BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho. The second day will be at the same location starting at 9:00 a.m. with elections of a new chairman, vice chairman and secretary. Other meeting topics include travel management planning updates, mining updates, RAC logistics and district and field office updates. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: *sawheeler@blm.gov.*

Dated: December 6, 2012.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2012–30078 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–INDU–10718; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Availability of the Record of Decision for the Final White-Tailed Deer Management Plan/Environmental Impact Statement, Indiana Dunes National Lakeshore, Indiana

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Final White-tailed Deer Management Plan/Environmental Impact Statement (Plan/EIS), Indiana Dunes National Lakeshore (Indiana Dunes), Indiana.

ADDRESSES: Copies of the ROD are available by request by writing to Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304; telephone (219) 395–1550.

Copies of the document also may be picked up in person at the Indiana Dunes Headquarters at the address above. The document may be found on the internet on the NPS PEPC Web site at *http://www.parkplanning.nps.gov/indu.*

FOR FURTHER INFORMATION CONTACT: Wildlife Biologist Randy Knutson, Indiana Dunes, at the address above or by telephone at (219) 395–1550.

SUPPLEMENTARY INFORMATION: The NPS has issued a ROD for the Final White-tailed Deer Management Plan/EIS for Indiana Dunes. On June 22, 2012, the Regional Director for the Midwest Region approved the ROD for the Final EIS. As soon as practicable, the NPS will begin to implement the selected alternative, Alternative D, which was the preferred alternative identified in the Final Plan/EIS.

The EIS described four alternatives for the management of deer at Indiana Dunes. Action is needed at this time to ensure that the local deer population does not become a dominant force that negatively influences ecosystem components within Indiana Dunes, such as sensitive vegetation or other wildlife. Impacts to these Indiana Dunes resources would compromise the exceptional biodiversity found within its boundaries. The Indiana Dunes staff currently implements resource management actions to protect other resources, but no specific deer management plan exists.

Under Alternative A (no action), current deer management actions (including limited fencing, limited use of repellents, and inventorying and monitoring efforts) would have continued; no new deer management actions would be taken. Alternative B would have included all actions described under Alternative A, but would have also incorporated non-lethal actions to possibly reduce deer numbers at Indiana Dunes. The additional actions would have included the construction of additional small-scale and new large-scale exclosures, more extensive use of repellents in areas where fenced exclosures would not be appropriate or feasible, and phasing in reproductive control of does when there is a federally approved fertility-control agent for application to free-ranging populations that provides multiple year (three to five years) efficacy for does. Alternative C would have included all actions described under Alternative A, but would also have incorporated a direct reduction of the deer herd size through sharpshooting and capture/euthanasia, where appropriate. Alternative D, the selected alternative, also includes all the actions described under Alternative A, but will incorporate a combination of specific lethal and non-lethal actions from Alternatives B and C. These actions will include the reduction of the deer herd through sharpshooting, in combination with capture/euthanasia and phasing in reproductive control of does (as described in alternative B) for longer-term maintenance of lower herd numbers.

Dated: July 31, 2012.

Patricia S. Trap,

Deputy Regional Director, Midwest Region.

[FR Doc. 2012–30037 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0088]

Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina—Call for Information and Nominations (Call)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations for Commercial Leasing for Wind Power on the Outer Continental Shelf, Offshore North Carolina.

SUMMARY: BOEM invites the submission of nominations for commercial wind leases that would allow a lessee to propose the construction of a wind energy project on the Outer Continental Shelf (OCS) offshore North Carolina, and to develop the project if approved after further environmental review. Although this announcement is not itself a leasing announcement, the Call Areas described herein, or portions thereof, may be available for future leasing. BOEM will use responses to this Call to gauge specific interest in acquiring commercial wind leases in some or all of the Call Areas, as required by 43 U.S.C. 1337(p)(3).

Parties wishing to submit a nomination in response to this Call should submit detailed and specific information in response to the requirements described in the section entitled, ''Required Nomination Information.''

This announcement also requests comments and information from interested and affected parties about site conditions, resources, and multiple uses in close proximity to, or within, the Call Areas that would be relevant to BOEM's review of any nominations submitted and/or to BOEM's subsequent decision to offer all or part of the Call Areas for commercial wind leasing. The information that BOEM is requesting is described in the section of this Call entitled, ''Requested Information from Interested or Affected Parties.''

This Call is published pursuant to subsection 8(p)(3) of the OCS Lands Act, 43 U.S.C. 1337(p)(3), which was added by section 388 of the Energy Policy Act of 2005 (EPAct), as well as the implementing regulations at 30 CFR part 585.

The Call Areas described in this notice are located on the OCS offshore North Carolina and are delineated as Wilmington-West, Wilmington-East and Kitty Hawk (formerly referred to as North Carolina Planning Areas 1, 2, and 5, respectively, during BOEM's North Carolina offshore wind planning efforts). The three Call Areas include 195 whole OCS blocks and 60 partial blocks in total and comprise approximately 1,441 square nautical miles (494,016 hectares). These Call Areas were established in consultation with the BOEM North Carolina Renewable Energy Intergovernmental Task Force (Task Force). A detailed description of the areas and how they were developed is described in the section of this Call entitled, ''Description of the Area.''

DATES: BOEM must receive your nomination describing your interest in one or more, or any portion of the Call Areas, postmarked by January 28, 2013 for your nomination to be considered. BOEM requests comments or submissions of information to be postmarked or delivered by this same date. BOEM will consider only those nominations received that conform to this requirement.

Submission Procedures: If you are submitting a nomination for a lease in response to this Call, please submit your nomination to the following address: BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. In addition to a paper copy of the nomination, include an electronic copy of the nomination on a data storage device. BOEM will list the parties that submitted nominations and the location of the proposed lease areas (i.e., OCS blocks nominated) on the BOEM Web site after the 45-day comment period has closed.

Comments and other submissions of information may be submitted by either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0088, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. U.S. Postal Service or other delivery service. Send your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

All responses will be reported on *http://www.regulations.gov.*

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this Call entitled, ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Will Waskes, Oceanographer, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *Will.Waskes@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Call for Information and Nominations

The OCS Lands Act requires BOEM to award leases competitively, unless BOEM makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). BOEM will make this determination after reviewing the nominations received in response to this Call.

This Call also requests information from interested and affected parties on issues relevant to BOEM's review of nominations for potential leases in the Call Areas. A lease, whether issued through a competitive or noncompetitive process, gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the lessee the right to use the leased area to develop its plans, which BOEM must approve before the lessee may proceed to the next stage of the process (30 CFR 585.600 and 585.601). The responses to this Call could lead to the initiation of a competitive leasing process in some parts of the Call Areas (i.e., where competition exists for certain tracts), and a noncompetitive process in other parts of the Call Areas (i.e., where no competitive interest exists for certain tracts). The leasing process is described more completely under the ''Determination of Competitive Interest'' and ''Noncompetitive Leasing Process'' sections of this Call. In any parts of the Call Areas where BOEM determines there is no competitive interest, BOEM may proceed with the noncompetitive lease process pursuant to 30 CFR 585.232. If BOEM determines that there is competitive interest in some or all of the Call Areas, then BOEM may proceed with Area Identification, as set forth in 30 CFR 585.211(b), and the competitive leasing process set forth under 30 CFR 585.211 through 585.225. Whether the leasing process is competitive or noncompetitive, it will include additional opportunities for the public to provide input, and any proposed actions will be reviewed thoroughly for potential environmental and multiple use impacts. The area(s) that may be finally offered for lease, if any, has/have not yet been determined, and may include less than the total areal extent of the Call Areas as identified in this Call.

Background

Energy Policy Act of 2005

The EPAct amended the OCS Lands Act by adding subsection 8(p)(1)(C), which authorizes the Secretary of the Interior to grant leases, easements, or rights-of-way (ROWs) on the OCS for activities that are not otherwise authorized by law and that produce or support production, transportation, or transmission of energy from sources other than oil or gas, including renewable energy sources. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated this authority to issue leases, easements, and ROWs, and to promulgate regulations, to the Director of BOEM. On April 29, 2009, BOEM published the Renewable Energy and Alternate Uses (REAU) rule, at 30 CFR Part 585, which can be found at: *http://www.boem.gov/uploadedFiles/30_CFR_585.pdf.*

Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

On July 19, 2010, the President signed Executive Order 13547 (Order) establishing a national ocean policy and the National Ocean Council (75 FR 43023). The Order establishes a comprehensive, integrated national policy for the stewardship of the ocean, our coasts, and the Great Lakes. Where BOEM actions affect the ocean or coast, the Order requires BOEM to take such action as necessary to implement the policy, stewardship principles, and national priority objectives adopted by the Order, with guidance from the National Ocean Council.

BOEM appreciates the importance of coordinating its planning endeavors with other OCS users, regulators and relevant Federal Agencies (e.g., U.S. Fish and Wildlife Service, the National Park Service, and the National Oceanic and Atmospheric Administration) and intends to follow principles of coastal and marine spatial planning, and coordinate with the regional planning bodies as established by the National Ocean Council. BOEM anticipates that continued coordination with its Task Forces will help inform comprehensive coastal and marine spatial planning efforts.

BOEM North Carolina Intergovernmental Renewable Energy Task Force

BOEM formed the North Carolina Task Force in January 2011, to facilitate coordination among relevant Federal agencies and affected state, local, and tribal governments throughout the leasing process. The Task Force meeting materials are available on the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.*

Environmental Review Process

BOEM intends to prepare an environmental assessment (EA), which will consider the environmental consequences associated with issuing commercial wind leases and approving site assessment activities on those leases within all or some of the Call Areas. BOEM is publishing, concurrently with this Call, a Notice of Intent (NOI) to prepare an EA, which seeks public input in identifying the environmental issues and alternatives to be considered in the EA.

The EA will consider the reasonably foreseeable environmental consequences associated with leasing and site characterization scenarios within the Call Areas (including geophysical, geotechnical, archaeological, and biological surveys), and site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the potential leaseholds. The NOI solicits input on the environmental effects associated only with the activities described above. The environmental effects of the construction or operation of any wind energy facility would be considered under a separate, project-specific National Environmental Policy Act (NEPA) environmental review process.

Several consultations will be conducted concurrently with, and integrated into, the current NEPA process. These consultations include, but are not limited to, those required by the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act (NHPA), and Executive Order 13175—''Consultation and Coordination with Tribal Governments.'' The results of these consultations will assist BOEM in deciding whether and where leases may be issued.

Actions Taken by the State of North Carolina in Support of Offshore Renewable Energy Development

BOEM recognizes the importance of the steps that the State of North Carolina has taken to encourage environmentally sound offshore wind energy development. While a state may promote such development, BOEM has the exclusive authority to issue leases, easements, and ROWs on the OCS for renewable energy purposes.

The State of North Carolina has been engaged in a planning process to evaluate and identify areas of the OCS that may be suitable for offshore wind energy development. This process helped inform state recommendations to BOEM regarding potentially suitable areas for BOEM to consider when moving forward with its offshore wind energy leasing process.

In the summer of 2008, the North Carolina General Assembly requested that the University of North Carolina at Chapel Hill conduct a 9-month study to assess the feasibility of producing wind energy in the Pamlico and Albemarle Sounds (S.L. 2008–107). Subsequently, the scope of the study was expanded to include waters off the North Carolina coast. The request specified that the assessment include an analysis of the spatial distributions of available wind power, ecological risks and synergies, use conflicts affecting site selection, foundation systems and their compatibility with sound- and ocean-bottom geology and associated geologic dynamics, electric transmission infrastructure, statutory and regulatory barriers associated with utilities, the legal context, carbon reduction potential, and economics. The study, entitled, *Coastal Wind, Energy for North Carolina's Future: A Study of the Feasibility of Wind Turbines in Pamlico and Albemarle Sounds and in Ocean Waters Off the North Carolina Coast* (North Carolina Wind Study), was presented to the Task Force for consideration and can be found at: *http://www.climate.unc.edu/coastal-wind/Coastal%20Wind%20Energy%20for%20NC2019s%20Future.pdf.*

BOEM's Planning and Leasing Process

Determination of Competitive Interest

The first step in the leasing process is to determine whether or not there is any interest in acquiring a lease within the Call Areas. At the same time, BOEM can determine whether there is overlapping interest in any particular portion of the Call Areas that would result in the need for a competitive process. At the conclusion of the comment period for this Call, BOEM will review the nominations received, undertake a completeness review and a qualifications review, and determine whether competitive interest exists in any specific location within the Call Areas.

If two nominated areas of interest fully or partially overlap, BOEM may proceed with competitive leasing as described in the section of this Call entitled, ''Competitive Leasing Process.'' For areas where BOEM determines that there is no competitive interest, BOEM may proceed with noncompetitive leasing described in the section entitled, ''Non-Competitive Leasing Process.'' BOEM may consult with the Task Force throughout the leasing process.

Situations may arise in which several parties nominate areas that do not overlap. Under these circumstances, BOEM could choose to employ an allocation system of leases that involves the creation of competition across tracts. This system is referred to as intertract competition and would also be implemented under the competitive process outlined in the regulations. BOEM may consult with the Task Force in determining the need for, and/or use of, intertract competition.

Respondents to this Call and members of the public should be aware that no lease will be issued, either competitively or noncompetitively, until the necessary consultations and environmental analysis have been completed and the public has been given an opportunity to comment. As a result, it is possible that certain areas nominated may not be leased, or that the areas nominated may be modified from their original, proposed form before being offered for lease.

Competitive Leasing Process

If, after receiving responses to this Call, BOEM proceeds with the competitive leasing process for certain areas, it would follow the steps required by 30 CFR 585.211 through 585.225:

(1) *Area Identification:* Based on the information submitted in response to this Call and the NOI, BOEM would determine the level of interest and identify the area(s) that would be appropriate to move forward with in the planning and leasing process. The area(s) identified will constitute a Wind Energy Area (WEA) under the Secretary's ''Smart from the Start'' wind energy initiative and will be subject to environmental analysis, in consultation with appropriate Federal agencies, states, local governments, tribes and other interested parties.

(2) *Proposed Sale Notice (PSN):* If BOEM decides to proceed with lease issuance in the Call Areas, then BOEM would first complete the analyses necessary to inform the preparation of the PSN, including any final NEPA documentation, the Consistency Determination required by the CZMA and its implementing regulations, and various analyses of proposed lease sale economic terms and conditions. BOEM would then publish the PSN in the **Federal Register** with a comment period of 60 days and send the PSN to the Governor of any affected state, and the executive of any affected local government. BOEM will also share the PSN with the Task Force. The PSN would describe the area(s) to be offered for leasing, the proposed conditions of a lease sale, and the proposed auction

format, lease document, and lease provisions/stipulations. Additionally, the PSN would describe the criteria and process for evaluating bids.

(3) *Final Sale Notice (FSN):* If BOEM decides to proceed with lease issuance after considering comments on the PSN, then it would publish the FSN in the **Federal Register** at least 30 days before the date of the lease sale.

(4) *Bid Submission and Evaluation:* Following publication of the FSN in the **Federal Register**, qualified bidders would be able to submit their bids to BOEM in accordance with procedures specified in the FSN. The bids, including any required deposits, would be reviewed for technical and legal adequacy. BOEM would evaluate the bids to determine if the bidder had complied with all applicable regulations. BOEM reserves the right to reject any or all bids and the right to withdraw an offer to lease an area, even after bids have been submitted.

(5) *Issuance of a Lease:* Following the selection of a winning bid(s) by BOEM, the bidder(s) would be notified of the decision and provided a set of official lease documents for execution. The successful bidder(s) would be required to execute the lease, pay the remainder of the bonus bid, if applicable, and file the required financial assurance within 10 days of receiving the lease documents. Upon receipt of the required payments, financial assurance, and properly executed lease forms, BOEM would issue a lease to the successful bidder(s).

Noncompetitive Leasing Process

If, after evaluating the responses to this Call, BOEM determines that there is no competitive interest in a proposed lease area, it may proceed with the noncompetitive lease issuance process pursuant to 30 CFR 585.232, as amended by the rulemaking which took effect on June 15, 2011, (76 FR 28178). Should BOEM decide to proceed with the noncompetitive leasing process, it would ask if the sole respondent who nominated a particular area wants to proceed with acquiring the lease, and if so, the respondent must submit an acquisition fee as specified by 30 CFR 585.502(a). After receiving the acquisition fee, BOEM would follow the process outlined in 30 CFR 585.231. Within 60 days of the date of that notice, the respondent would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 585.231(d)(2)(i). BOEM will comply with the requirements of NEPA, CZMA, ESA, NHPA, and other applicable Federal statutes before issuing a lease noncompetitively. BOEM would coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, and affected state and local governments prior to issuing a noncompetitive lease, and in formulating lease terms, conditions, and stipulations.

It is possible that responses to this Call may result in a determination that there is competitive interest in acquiring leases in some areas but not in others. BOEM will publicly announce its determinations before proceeding with any type of leasing process.

Description of the Area

The Call Areas offshore North Carolina are delineated as Wilmington-West, Wilmington-East and Kitty Hawk, formerly referred to as North Carolina Planning Areas 1, 2, and 5 respectively, during BOEM's North Carolina offshore wind planning efforts. The three Areas include 195 whole OCS blocks and 60 partial blocks in total and comprise approximately 1,441 square nautical miles (494,016 hectares).

Call Area Wilmington-West

The boundary of Call Area Wilmington-West begins 7 nautical miles (nmi) from the shore and extends roughly 11 nmi seaward. It extends from east to west approximately 15 nmi. The entire area is approximately 78 square nautical miles (26,784 hectares).

The following 6 full OCS blocks are included within Call Area Wilmington-West: Georgetown NI17–09 Blocks 6231, 6232, 6281, 6282, 6283, and 6332. In addition, parts of the following 9 OCS blocks are included within the area of interest: Georgetown NI17–09 Blocks 6230, 6233, 6234, 6235, 6284, 6285, 6333, 6334, and 6383 as described in the table below.

LIST OF PARTIAL OCS BLOCKS (INCLUDING SUB-BLOCKS) IN CALL AREA WILMINGTON-WEST

Protraction name	Protraction No.	Block No.	Sub-block
Georgetown	NI17–09	6230	C, D, F, G, H, I, J, K, L, M, N, O, P.
Georgetown	NI17–09	6233	A, B, C, E, F, G, H, I, J, K, L, M, N, O, P.
Georgetown	NI17–09	6234	E, F, G, H, I, J, K, L, M, N, O, P.
Georgetown	NI17–09	6235	E, F, G, H, I, J, K, L, M, N, O.
Georgetown	NI17–09	6284	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O.
Georgetown	NI17–09	6285	A, B, E.
Georgetown	NI17–09	6333	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O.
Georgetown	NI17–09	6334	A, B, E.
Georgetown	NI17–09	6383	A, B, E.

Call Area Wilmington-East

The boundary of Call Area Wilmington-East begins 13 nmi from the shore and extends roughly 28 nmi seaward. It extends from east to west approximately 21 nmi. The entire area is approximately 327 square nautical miles (111,984 hectares).

The following 51 full OCS blocks are included within the Call Area Wilmington-East: Georgetown NI17–09 Blocks 6438, 6389, 6439, 6488, 6489, 6538, 6539, 6587, 6588, 6589, 6638, 6639; Cape Fear NI18–07: Blocks 6351, 6401, 6402, 6403, 6451, 6452, 6453, 6454, 6501, 6502, 6503, 6504, 6505, 6551, 6552, 6553, 6554, 6555, 6556, 6601, 6602, 6603, 6604, 6605, 6606, 6652, 6653, 6654, 6655, 6656, 6657, 6703, 6704, 6705, 6706, 6754, 6755, 6804, 6854. In addition, parts of the following 15 OCS blocks are included within the area of interest Georgetown NI17–09: Blocks 6388, 6437, 6487, 6537; Cape Fear NI18–07: Blocks 6352, 6353, 6404, 6455, 6506, 6507, 6508, 6557, 6558, 6607, and 6855 as described in the table below.

LIST OF PARTIAL OCS BLOCKS (INCLUDING SUB-BLOCKS) IN CALL AREA WILMINGTON-EAST

Protraction name	Protraction No.	Block No.	Sub-block
Georgetown	NI17–09	6388	B, F, G, H, J, K, L, M, N, O, P.
Georgetown	NI17–09	6437	K, L, O, P.
Georgetown	NI17–09	6487	C, D, G, H, K, L, O, P.
Georgetown	NI17–09	6537	B, C, E, F, G, H, J, K, L, N, O, P.
Cape Fear	NI18–07	6352	E, F, G, H, I, J, K, L, M, N, O, P.
Cape Fear	NI18–07	6353	E, F, I, J, K, M, N, O, P.
Cape Fear	NI18–07	6404	A, E, F, I, J, K, M, N, O, P.
Cape Fear	NI18–07	6455	A, E, F, G, I, J, K, L, M, N, O, P.
Cape Fear	NI18–07	6506	A, B, E, F, G, H, J, K, L, M, N, O, P.
Cape Fear	NI18–07	6507	L, M, N, O, P.
Cape Fear	NI18–07	6508	I, M.
Cape Fear	NI18–07	6557	A, B, C, D, E, F, G, H, I, J, K, M, N, O.
Cape Fear	NI18–07	6558	A.
Cape Fear	NI18–07	6607	A, B, C, E, F, G, H, J, K, M, N, O, P.
Cape Fear	NI18–07	6855	A, B, C, D, E, F, G, H, I, J, K, L, M, N, O.

Respondents should be aware that Georgetown NI17–09 Blocks 6439, 6489, 6539, 6589, 6639; Cape Fear NI18–07 Blocks 6351, 6401, 6451, 6501, 6551, and 6601 border the edge of Universe Transverse Mercator (UTM) Zones 17 and 18. As a result, while these blocks are considered full OCS lease blocks, they vary in area and are smaller than standard OCS blocks. Official acreages for the blocks located within OPD NI18–07 can be found at: *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/NI18-07-01-APR-2008-pdf.aspx* . Official acreages for the blocks located within OPD NI17–09 can be found at: *http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/NI17-09-01-APR-2008.aspx.*

Kitty Hawk

The boundary of Call Area Kitty Hawk begins 6 nmi from the shore and extends roughly 34 nmi seaward. It extends from north to south approximately 45 nmi. The entire area is approximately 1,036 square nautical miles (355,248 hectares).

The following 138 full OCS blocks are included within the Call Area Kitty Hawk: Currituck NJ18–1 Blocks 6608, 6609, 6610, 6611, 6612, 6613, 6614, 6615, 6658, 6659, 6660, 6661, 6662, 6663, 6664, 6665, 6666, 6667, 6668, 6669, 6708, 6709, 6710, 6711, 6712, 6713, 6714, 6715, 6716, 6717, 6718, 6719, 6720, 6759, 6760, 6761, 6762, 6763, 6764, 6765, 6766, 6767, 6768, 6769, 6770, 6809, 6810, 6811, 6812, 6813 6714, 6815, 6816, 6817, 6818, 6819, 6820, 6859, 6860, 6861, 6862, 6863, 6864, 6865, 6866, 6867 6868, 6869, 6870, 6909, 6910, 6911, 6912, 6913, 6914, 6915, 6916, 6917, 6918, 6919, 6920, 6960, 6961, 6962, 6963, 6964, 6965, 6966, 6967, 6968, 6969, 6970, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7061, 7062, 7063, 7066, 7067, 7068, 7069, 7070, 7112, 7116, 7117, 7118, 7119, 7166, 7167, 7168, 6769; NI18–02 Blocks 6017, 6018, 6019, 6067, 6068, 6069, 6117, 6618, 6119, 6165, 6166, 6167, 6168, 6169, 6216, 6217, 6218, and 6219. In addition, parts of the following 36 OCS blocks are included within the area of interest: Currituck NJ18–11: Blocks 6607, 6657, 6758, 6808, 6858, 6909, 6959, 7010, 7060, 7064, 7065, 7111, 7113, 7114, 7115, 7120, 7161 7162, 7163, 7170; Manteo NI18–02: Blocks 6012, 6016, 6020, 6066, 6070, 6114, 6115, 6116, 6120, 6164, 6215, 6265, 6266, 6267, 6268, and 6269 as described in the table below.

LIST OF PARTIAL OCS BLOCKS (INCLUDING SUB-BLOCKS) IN CALL AREA KITTY HAWK

Protraction name	Protraction No.	Block No.	Sub-block
Currituck	NJ18–11	6607	C, D, G, H, K, L, O, P.
Currituck	NJ18–11	6657	D, H, L, P.
Currituck	NJ18–11	6758	B, C, D, F, G, H, J, K, L, N, O, P.
Currituck	NJ18–11	6808	C, D, G, H, K, L, P.
Currituck	NJ18–11	6858	D, H.
Currituck	NJ18–11	6909	A, B, C, D, F, G, H, J, K, L, O, P.
Currituck	NJ18–11	6959	C, D, G, H, L, P.
Currituck	NJ18–11	7010	A, B, C, D, E, F, G, H, J, K, L, N, O, P.
Currituck	NJ18–11	7060	C, D, G, H, L.
Currituck	NJ18–11	7064	A, B, C, D, E, F, G, H, I, J, K, M, N.
Currituck	NJ18–11	7065	A, B, C, D, E, F, G, H, I, J, K, L, N, O, P.
Currituck	NJ18–11	7111	A, B, C, D, E, F, G, H, J, K, L, N, O, P.
Currituck	NJ18–11	7113	A, B, C, D, E, F, G, H, I, J, K, M, N.
Currituck	NJ18–11	7114	A.
Currituck	NJ18–11	7115	B, C, D, G, H, L, P.
Currituck	NJ18–11	7120	A, B, C, E, F, G, I, J, K, M, N, O.
Currituck	NJ18–11	7161	C, D, G, H, L, P.
Currituck	NJ18–11	7162	A, B, C, D, E, F, H, I, J, K, M, N.
Currituck	NJ18–11	7163	A.
Currituck	NJ18–11	7170	A, B, C, E, F, G, I, J, K, M, N, O.
Manteo	NI18–02	6012	A.
Manteo	NI18–02	6016	A, B, C, D, E, F, G, H, J, K, L, O, P.
Manteo	NI18–02	6020	A, B, C, E, F, I, J, M, N.

LIST OF PARTIAL OCS BLOCKS (INCLUDING SUB-BLOCKS) IN CALL AREA KITTY HAWK—Continued

Protraction name	Protraction No.	Block No.	Sub-block
Manteo	NI18–02	6066	C, D, H, L, P.
Manteo	NI18–02	6070	A, B, E, F, I, J, M, N.
Manteo	NI18–02	6114	H, J, K, L, N, O, P.
Manteo	NI18–02	6115	E, I, J, M, N, O, P.
Manteo	NI18–02	6116	C, D, F, G, H, I, J, K, L, M, N, O, P.
Manteo	NI18–02	6120	A, B, E, F, I, J, M, N.
Manteo	NI18–02	6164	B, C, D, H, L.
Manteo	NI18–02	6215	A, B, C, D, E, F, G, H, I, J, K, L, N, O, P.
Manteo	NI18–02	6265	B, C, D, E, F, G, H, J, K.
Manteo	NI18–02	6266	A, B, C, D, E, F.
Manteo	NI18–02	6267	A.
Manteo	NI18–02	6268	D.
Manteo	NI18–02	6269	A, B, C, D, G, H.

OCS Blocks (Including Sub-Blocks) In the Call Areas Potentially Subject to Limitations

Navigational Safety

The U.S. Coast Guard (USCG) advises that most of the blocks included in the Call Areas would require further study to determine risks to navigational safety (see the following ''Navigational Issues'' section) if they were selected for leasing and development. BOEM may decide that certain OCS blocks included in the Call Areas will not be made available for leasing and/or development for navigational safety reasons, or stipulations may be developed to mitigate navigational concerns.

If all of the blocks included in Call Areas Wilmington-West and Wilmington-East were to be made available for leasing and development, portions of a number of sub-blocks may not be available for surface occupancy, (i.e. the placement of wind facilities), because of proximity to the Traffic Separation Scheme (TSS) in the approaches to the Cape Fear River. These sub-blocks are listed in the table below.

Call area	Protraction name	Protraction No.	Block No.	Sub-block
Wilmington-West	Georgetown	NI1709	6235	H, K, L, N, O.
Wilmington-West	Georgetown	NI1709	6285	A, B, E.
Wilmington-West	Georgetown	NI1709	6284	H, K, L, N, O.
Wilmington-West	Georgetown	NI1709	6334	B, E.
Wilmington-West	Georgetown	NI1709	6333	L, O.
Wilmington-East	Georgetown	NI1709	6437	K, O.
Wilmington-West	Georgetown	NI1709	6383	B, E.

Department of Defense Activities

The Department of Defense (DOD) conducts offshore testing, training, and operations in the Call Areas. To avoid or minimize potential conflicts with existing DOD activities, site-specific stipulations may be necessary for all OCS blocks within the Call Areas.

Such stipulations may include, but are not limited to, a hold-and-save-harmless agreement where the lessee assumes all risks of damage or injury to persons or property if such injury or damage to such person or property occurs by reason of the activities of the U.S. Government, and/or a requirement that at times requested by the DOD, the lessee controls its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors when operating in specified DOD Operating Areas (OPAREAs) or warning areas. Other examples of stipulations that may be required include a stipulation that the lessee enter into an agreement with the appropriate DOD commander when operating vessels or aircraft in a designated OPAREA or warning area, requiring that these vessel and aircraft movements be coordinated with the appropriate DOD commander, and/or a stipulation that DOD can request temporary suspension of operations and/or require evacuation on the lease in the interest of safety and/or national security.

Map of the Call Areas

A map of the Call Areas and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 17 or UTM Zone 18 (based on the Call Area geographic location), NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: *http://www.BOEM.gov/offshore/RenewableEnergy/StateActivities-North Carolina.htm.*

A large scale map of the Call Areas showing their boundaries with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. Phone: (703) 787–1320, Fax: (703) 787–1708.

Development of the Call Areas

The Call Areas were delineated by BOEM in consultation with the Task Force, and are intended to minimize user conflicts while making appropriate areas available for potential commercial offshore wind energy leasing and development. The USCG advises that navigational conflicts may exist as described in the section entitled, ''Navigational Issues.'' Specific mitigation, stipulations, or exclusion areas may be developed and applied at the leasing, site assessment, and/or the construction and operations stages as a result of environmental reviews and associated consultations, and by using information gathered through continued coordination with the Task Force. The following information and issues were discussed during consultation with the Task Force.

Results of North Carolina's Coastal Wind Study

The Call Areas were developed with consideration of the boundaries recommended by the North Carolina Wind Study. The results of the study helped to identify areas that may not be suitable for wind development, based on features ranging from ocean-bottom geological and associated geological dynamics, electric transmission infrastructure, ocean usages and the presence and density of biological resources including avian populations and aquatic habitat. Of additional concern, as indicated by the North Carolina Study, is the alteration of viewscapes from the Cape Hatteras and Cape Lookout National Seashores.

Areas Removed From Further Leasing Consideration

BOEM considered the findings of the North Carolina Study, Task Force input, and other relevant studies and removed the following areas from further leasing consideration:

1. No Build Areas (e.g., TSSs, marine sanctuaries, shipwreck clusters, explosive zones, areas in close proximity to anchorage areas, etc.): Leasing and potential development has been removed from consideration in blocks containing some of these features (e.g., TSSs) since it would likely directly and adversely affect shipping or be impractical to conduct ocean-bottom penetrating activities. BOEM may later require set-backs from these or other features.

2. Areas of High Avian Densities: Areas with high avian densities are mostly concentrated along inlet areas (to a distance of 5 miles in all directions from the center of the inlet), in large zones off each of the three major Capes (Hatteras, Lookout, and Fear), and in areas swept by the Gulf Stream. Adverse effects may occur because of the greater potential for in-flight mortality from collisions with wind turbines, avoidance behaviors caused by the disturbance/presence of turbines and/or disturbance of ocean-bottom features.

3. Areas with Unique Geological Conditions:

a. The shoreline seaward to the 15-meter depth contour, including a four-mile zone around the inlet/outlet systems. This area is the active part of the barrier island system associated with sediment transport, inlet dynamics, and storm processes.

b. Highly dissected outcrops of Oligocene Limestone, Miocene Pungo River Formation, and thin Quaternary carbonate cap rocks. These extensive hard-bottoms and firm-bottoms contain tremendous relief, biodiversity, and bio-productivity.

c. Algal reef which occurs at the shelf edge and above the steep drop-off of the continental slope that is dominated by steep clinoform sediment deposits, slump blocks, and flow structures.

d. East of Diamond Shoals where the shelf edge is characterized by an extremely steep erosional scarp with a downstream sediment scour and a deposition zone that sweeps off to the northeast. These features are probably the direct result of erosion and deposition by the Gulf Stream as it is deflected off the North Carolina continental margin at Cape Hatteras.

e. Shallow and Active Sand Bodies of the cross-shelf and the cape shoal structures (Frying Pan Shoals, Diamond Shoals and Cape Lookout Shoals) are critical components of the large-scale and long-term sediment dynamics of the barrier island system and are characterized by active bedforms and scour.

4. Areas within 6 miles from shore: The results of the numerous studies along the Mid-Atlantic and North-Atlantic found that birds, certain marine mammals and other resources occur in higher densities closer to shore. In addition, numerous shipwrecks, reefs, and shoals tend to occur in this zone, typically from the shoreline to 6 miles offshore. Therefore, some environmental impacts could be reduced with increasing distance from the shoreline.

5. Fish, Fisheries and Marine Habitats: The three main Capes in North Carolina are regions of high biological productivity and high levels of fishing activity. Live bottom habitat becomes increasingly common on the North Carolina OCS from north to south. A zone south of Cape Fear and located in a band that ranges from about 8 to 20 miles wide is thought to be such a concentration and has been removed from consideration.

6. Military Areas: DOD conducts operations readiness activities for both hardware and personnel on the OCS. The Call Areas were refined based on DOD assessments of compatibility between potential commercial offshore wind development and DOD testing, training and operational activities. Although OCS blocks determined to be incompatible with these activities were removed from consideration, site specific stipulations may be necessary for remaining lease blocks in the Call Areas to avoid conflicts with DOD activities. BOEM will consult with the DOD regarding potential issues concerning offshore testing, training and operational activities, and will use best management practices to develop appropriate stipulations to avoid conflicts with DOD in the Call Areas.

Areas Under National Park Service (NPS) Jurisdiction

The mission of the NPS, as set forth under the NPS Organic Act, is to protect the natural and cultural resources, including the scenery, in units of the National Park System, and to provide for their enjoyment in a manner that will leave them unimpaired for future generations (*http://www.nps.gov/aboutus/mission.htm;* also see 16 U.S.C. 1). The NPS has advised BOEM that Congress established the Cape Hatteras National Seashore, in part, to conserve the scenic values and natural and cultural resources of the dynamic barrier islands in the area. Cape Hatteras National Seashore is home to the National Historic Landmark Cape Hatteras Light Station and other historic properties.

The NPS has informed BOEM that the Cape Hatteras National Seashore is important to the local economy and that in 2010, the NPS recorded more than 2.1 million recreational visits to Cape Hatteras National Seashore and a contribution of $115 million and approximately 1,800 jobs to the local economy. The NPS shared with BOEM a 2002 Outer Banks Group Parks Visitor Study conducted by the University of Idaho. In this study, visitors were asked to rate the importance of selected attributes in planning for the preservation of Cape Hatteras National Seashore for future generations. According to the study, 84 percent of the respondents identified scenic views as extremely or very important. The NPS believes these economic and recreational values are directly dependent on the quality of park resources and the visitor experience at this popular seashore.

Units of the National Park System and other marine protected areas are identified as ''Areas of Special Concern'' in Section 5.2.15 of the October 2007 Outer Continental Shelf (OCS) Alternative Energy Programmatic Environmental Impact Statement (PEIS). Call Area Kitty Hawk is located offshore of properties managed by the NPS.

The NPS has raised concerns over the potential impact that wind energy development off the coast of North Carolina could have on scenic ocean views and night skies of the Cape Hatteras National Seashore. At this time, BOEM has not modified the Call Area Kitty Hawk, portions of which are off the coast of the Cape Hatteras National Seashore, to address these concerns.

To help BOEM and NPS better evaluate the potential visual impacts of commercial wind energy development on visitors to the Cape Hatteras and Cape Lookout National Seashores, the two agencies undertook a visual simulation study in the interest of providing accurate representations of offshore wind facilities at various distances (i.e., 10, 15 and 20 nmi) from shore and under a variety of conditions (e.g., daytime and nighttime views, multiple array configurations, various lighting conditions, etc.). The study was completed in August 2012. Based on the study results and the dimension of the turbines analyzed, from certain locations and under certain conditions, turbines could be visible during the day and at night at 20 nmi (the outer limit of the visual simulations configurations). Results of the visualization study can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.*

The NPS is concerned about the potential impact to the scenic experience of visitors to the Cape Hatteras National Seashore. Although BOEM is not modifying the Call Area Kitty Hawk at this time, BOEM may in the future determine that portions of the Call Area Kitty Hawk may not be appropriate for commercial wind development.

Navigational Issues

The USCG used a color-coding system to designate portions of the three Call areas as green, yellow, and red. A designation of green indicates that the USCG believes that an area, if developed, would pose minimal to no detrimental impact on navigational safety, but that the area should still be subject to further study. A designation of yellow indicates that the USCG believes that development of the area could have unacceptable effects on navigational safety and that further study is required to determine the potential effect that development of the area would have on navigational safety. A designation of red indicates that the USCG believes that development of that area would have an unacceptable effect on navigational safety based on existing navigational routes. A map showing the OCS blocks (including sub-blocks) and their corresponding color coding can be found at: *http://boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.*

BOEM has analyzed USCG 2009 and 2010 Automatic Identification System (AIS) data, including density plots (by 1/16th of an OCS Block) for all vessel types and various individual vessel types (e.g. tankers, cargo vessels, tugs, etc.) for the OCS offshore North Carolina. Maps of Call Areas Wilmington-West, Wilmington-East and Kitty Hawk overlaid on these AIS analyses can be found at: *http://boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.*

The 2009 and 2010 AIS data used to conduct this analysis, in addition to other AIS tools, can be downloaded at: *http://www.marinecadastre.gov/AIS/default.aspx.*

BOEM encourages respondents and interested parties to incorporate this information into their decision-making and comments and when nominating areas.

In general, placement of obstacles in previously open seas may have an impact on maritime traffic. The AIS data show that portions of the Call Areas are trafficked by multiple types of vessels traveling along the Atlantic Coast and entering and leaving ports located in New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina and South Carolina. These vessels include commercial, military, and commercial fishing vessels. The transit patterns of these vessels are influenced by the unique coastal geology and oceanographic conditions off North Carolina's coast. BOEM will consider potential impacts to existing users when conducting reviews of any Construction and Operations Plans (COP) submitted subsequent to a leasing process and may require that lessees mitigate these impacts. Potential respondents to the Call should recognize that the impacts on existing users must be evaluated before a project can be approved. The USCG has generated AIS data plots and information for the Call Areas that are available on the USCG Atlantic Coast Port Access Route study Web site at: *www.uscg.mil/lantarea/acpars* and will provide raw data for analysis upon request. Potential respondents should recognize that portions of the Call Areas may not be offered for leasing and development by BOEM because of existing vessel traffic.

The USCG has a responsibility to ensure the safety of navigation under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221). The PWSA requires the USCG to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States. The USCG does so by designating necessary fairways and TSSs for vessels operating in the territorial sea of the United States and in high sea approaches, outside the territorial sea. The USCG may also determine that establishment of other ships' routing measures would enhance navigational safety, and it works with its Federal interagency and International Maritime Organization partners to establish these voluntary measures as necessary.

The potential for navigational safety risk posed by building structures in proximity to shipping routes is affected by numerous factors including, but not limited to: Vessel size, vessel type, density of traffic, prevailing weather and hydrographic conditions, ocean and wind driven currents, cumulative impact of multiple obstructions (for example, wind assessment or development facilities), existence of multiple shipping routes (for example, crossing or meeting situations), radar/automatic radar plotting aid (ARPA) interference, and the existence of mitigating factors such as navigational aids, vessel traffic services, or pilotage. Currently, there is no standard recommended separation distance between offshore renewable energy facilities and shipping routes. The USCG has reviewed guidance published by other countries, such as the United Kingdom's Maritime Guidance Note MGN–371, and consulted with its own waterways subject matter experts. Currently, the USCG considers that the placement of offshore wind assessment and generation facilities in any area less than 1 nmi from traditional shipping routes poses a high risk to navigational safety and therefore does not recommend placement of offshore renewable energy facilities in such areas. The USCG considers placement of such wind facilities in areas greater than 5 nmi from existing shipping routes to pose minimal risk to navigational safety. Areas considered for placement of wind facilities between 1 nmi and 5 nmi would require additional USCG analysis to determine if mitigation factors could be applied to bring navigational safety risk within USCG acceptable levels.

Respondents to this Call should note that impacts to radar and ARPA may still occur outside of 1 nmi and will have to be evaluated along with other potential impacts. The above are only planning guidelines and may be changed based on the completion of the Atlantic Coast Port Access Route Study (ACPARS), which is described herein. In addition, these guidelines may be further modified upon completion of a Navigational Safety Risk Assessment (NSRA) that is required before BOEM approves construction of any offshore renewable energy facilities. The USCG is conducting an ACPARS to determine how best to route traffic on the Atlantic coast. See 76 FR 27288 (May 11, 2011). This study will better inform the USCG about the navigational safety risks associated with construction of offshore renewable energy facilities. The data gathered during this ACPARS may result in the establishment of new vessel routing measures, modification of existing routing measures, or removal of some existing routing measures off the Atlantic Coast from Maine to Florida.

As a parallel effort that is shorter in duration, BOEM is working to establish a Maritime Working Group (MWG) to facilitate consideration of vessel traffic and safety concerns when making decisions regarding the further delineation of North Carolina Call Areas for potential leasing and development offshore North Carolina. BOEM hopes to address these concerns through the analysis of vessel movement data, such as AIS information, and the integration of maritime stakeholder input. The MWG would comprise maritime stakeholders that use the waters offshore North Carolina, regulate their use, or have a unique geographic expertise of vessel traffic patterns in the area. Ideally, this effort would distinguish traditional shipping routes, delineate appropriate shipping corridor widths and buffers, and recommend potential modifications to established routing measures and new routing measures that could be incorporated into the USCG ACPARS and assist BOEM in decision-making.

Transmission Issues

As indicated in Section 5.2.15.3 of the OCS Alternative Energy Programmatic Environmental Impact Statement (PEIS) at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Programmatic_Environmental_Impact_Statement_(PEIS),* transmission facilities would not be located on NPS properties.

Required Nomination Information

If you intend to submit a nomination for a commercial wind energy lease in the areas identified in this notice, you must provide the following information:

(1) The BOEM Protraction name, number, and specific whole or partial OCS blocks within the Call Area(s) that are of interest for commercial wind leasing, including any required buffer area. This information should be submitted as a spatial file compatible with ArcGIS 10.0 in a geographic coordinate system (NAD 83) in addition to your hard copy submittal. If your proposed lease area(s) includes one or more partial blocks, please describe those partial blocks in terms of a sixteenth (i.e. sub-block) of an OCS block. BOEM will not consider any areas outside of the Call Areas in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A preliminary schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area(s) that you wish to lease, including energy and resource data and information used to evaluate the Call Areas. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 10.0 in a geographic coordinate system (NAD 83);

(5) Documentation demonstrating that you are legally qualified to hold a lease, as set forth in 30 CFR 585.106 and 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the BOEM Renewable Energy Framework Guide Book available at: *http://www.BOEM.gov/offshore/RenewableEnergy/PDFs/REnGuidebook_03August2009_3_.pdf.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section'', below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in (2) above. Guidance regarding the required documentation to demonstrate your technical and financial qualifications can be found at: *http://www.BOEM.gov/offshore/RenewableEnergy/PDFs/QualificationGuidelines.pdf.* Documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a storage media device to be an acceptable format for submitting an electronic copy.

It is critical that you submit a complete nomination so that BOEM may evaluate your submission in a timely manner. If BOEM reviews your nomination and determines that it is incomplete, BOEM will inform you of this determination in writing. This letter will describe the information that BOEM determined to be missing from your nomination, and which you must submit in order for BOEM to deem your submission complete. You will be given 15 business days from the date of that letter to submit the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines this second submission is insufficient and has failed to complete your nomination, then BOEM retains the right to deem your nomination invalid. In such a case, BOEM will not process your nomination.

It is not required that you submit a nomination in response to this Call in order to submit a bid in a potential lease sale offshore North Carolina, should BOEM determine that competitive interest exists in one or more portions of the Call Areas after the close of the Call comment period. However, you would not be able to participate in such a lease sale unless, prior to the sale, you had demonstrated that you are legally qualified to hold a BOEM renewable energy lease, and you had demonstrated that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities you would propose to install on your lease. To ensure that BOEM has sufficient time to process your qualifications package, you should submit this package during the PSN 60-day public comment period. More information can be found at: *http://www.BOEM.gov/offshore/RenewableEnergy/PDFs/QualificationGuidelines.pdf.*

Requested Information From Interested or Affected Parties

BOEM is requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

1. Geological, geophysical, and biological conditions (including bottom and shallow hazards and live bottom) in the area described in this notice;

2. Known archaeological and/or cultural resource sites on the seabed in the areas described in this notice;

3. Historic properties potentially affected by the construction of meteorological towers, the installation of meteorological buoys, or commercial wind development in the areas identified in this Call;

4. Multiple uses of the areas, including navigation (commercial and recreational vessel use), fishing hotspots, and commercial fishing areas;

5. Information relating to whether or not offshore wind turbines located in the areas identified in this notice would adversely affect the North Carolina seascape, and ideas or strategies that could be used to help mitigate or minimize any adverse visual effects,

such as: how far offshore turbines should be placed to minimize the visual impact from the coastline, specific locations or areas to avoid development altogether, or any other strategies to help reduce the visual footprint (for example, the color of the turbines [towers, nacelle, blades], the arrangement or pattern of the turbine array, the dimension of the turbines (e.g., height and blade span), visual navigational lighting requirements, the maximum number of turbines that should be allowed in a specific area, etc.);

6. The type of transmission system (e.g., AC, HVDC, etc.) a prospective developer would likely utilize for a wind facility offshore North Carolina. If AC, please state and explain the maximum distance you would be willing to run an AC transmission system to deliver power from an offshore wind facility to an onshore substation;

7. General interest by a developer(s) in constructing a backbone transmission system that would transport electricity generated by wind projects located offshore North Carolina, including a general description of the transmission's proposed path and potential interconnection points;

8. Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area identified in this notice. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 10.0 in a geographic coordinate system (NAD 83);

9. Habitats that may require special attention during siting and construction; and

10. Other relevant socioeconomic, biological, and environmental information.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information that you submit, as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential (1) the legal title of the nominating entity (for example, the name of your company), or (2) the list of whole or partial blocks that you are nominating. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under Section 304 of NHPA as confidential.

Dated: December 10, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–30093 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Documents Prepared for Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS region.

SUMMARY: BOEM, in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEAs) and Findings of No Significant Impact (FONSIs). These documents were prepared during the period July 1, 2012, through September 30, 2012, for oil, gas, and mineral-related activities that were proposed in the Gulf of Mexico, and are more specifically described in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (GM 250E), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEM prepares SEAs and FONSIs for certain proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of proposed activities and present BOEM conclusions regarding the significance of those effects. The SEAs are used as a basis for determining whether or not approval of a proposal constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances when BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Activity/Operator	Location	Date
Shell Offshore Inc., Geological & Geophysical Survey, SEA L12–005.	Located in the Central Planning Area of the Gulf of Mexico	7/3/2012
Cobalt International Energy, L.P., Exploration Plan, SEA R–5605.	Located in the Central Planning Area of the Gulf of Mexico, south of Louisiana.	7/3/2012
Noble Energy, Inc., Exploration Plan, SEA N–9644	Located in the Central Planning Area of the Gulf of Mexico, southeast of Venice, Louisiana.	7/3/2012
Hunt Oil Company, Structure Removal, SEA ES/SR 12–118	High Island, Block A554, Lease OCS–G 21356, located 87 miles from the nearest Texas shoreline.	7/5/2012
Murphy Exploration & Production Company—USA, Exploration Plan, SEA R–5399.	Mississippi Canyon, Block 950, Lease OCS–G 27318, located 71 miles from the nearest Louisiana shoreline.	7/5/2012

Activity/Operator	Location	Date
Tana Exploration Company LLC, Structure Removal, SEA ES/SR 12–111.	High Island, Block 47, Lease OCS–G 23193, located 17 miles from the nearest Louisiana shoreline.	7/6/2012
Tana Exploration Company LLC, Structure Removal, SEA ES/SR 12–116.	High Island, Block 73, Lease OCS–G 25553, located 20 miles from the nearest Louisiana shoreline.	7/6/2012
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 12–161.	Eugene Island, Block 143, Lease OCS–G 17973, located 22 miles from the nearest Louisiana shoreline.	7/9/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–205.	Ship Shoal, Block 114, Lease OCS 00064, located 14 miles from the nearest Louisiana shoreline.	7/9/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–073, 07–074 & 07–075.	Eugene Island, Block 108, Lease OCS–G 03811, located 22 miles from the nearest Louisiana shoreline.	7/10/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–152.	South Marsh Island, Block 146, Lease OCS–G 09546, located 83 miles from the nearest Louisiana shoreline.	7/10/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 07–076A.	South Pelto, Block 23, Lease OCS–G 01238, located 16 miles from the nearest Louisiana shoreline.	7/10/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–144.	South Timbalier, Block 11, Lease OCS–G 13925, located 3 miles from the nearest Louisiana shoreline.	7/10/2012
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–297.	Vermilion, Block 250, Lease RUE OCS–G 23670, located 66 miles from the nearest Louisiana shoreline.	7/10/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–009.	Vermilion, Block 26, Lease OCS 00297, located 5 miles from the nearest Louisiana shoreline.	7/10/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–032.	Vermilion, Block 26, Lease OCS 00297, located 5 miles from the nearest Louisiana shoreline.	7/10/2012
Tana Exploration Company LLC, Structure Removal, SEA ES/SR 12–110.	West Cameron, Block 202, Lease OCS–G 24718, located 31 miles from the nearest Louisiana shoreline.	7/10/2012
Tarpon Operating & Development, L.L.C., Structure Removal, SEA ES/SR 12–108.	Brazos, Block A76, Lease OCS–G 26469, located 38 miles from the nearest Texas shoreline.	7/11/2012
Mobil Oil Exploration & Producing Southeast Inc., Structure Removal, SEA ES/SR 12–175.	Mobile, Block 822, Lease OCS–G 05056, located 3 miles from the nearest Alabama shoreline.	7/11/2012
Apache Corporation, Structure Removal, SEA ES/SR 11–162 ...	South Marsh Island, Block 58, Lease OCS–G 01194, located 57 miles from the nearest Louisiana shoreline.	7/11/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–171 ...	Vermilion, Block 24, Lease OCS–G 03543, located 4 miles from the nearest Louisiana shoreline.	7/11/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–005.	Vermilion, Block 26, Lease OCS 00297, located 5 miles from the nearest Louisiana shoreline.	7/11/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–025.	Vermilion, Block 26, Lease OCS–G 00297, located 5 miles from the nearest Louisiana shoreline.	7/11/2012
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 12–176.	West Cameron, Block 479, Lease RUE OCS–G 30039, located 78 miles from the nearest Louisiana shoreline.	7/11/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–332A & 11–329A.	West Cameron, Block 91, Lease OCS–G 13557, located 12 miles from the nearest Louisiana shoreline.	7/11/2012
Medco Energi US LLC, Structure Removal, SEA ES/SR 12–121	Brazos, Block 437, Lease OCS–G 27476, located 12 miles from the nearest Texas shoreline.	7/12/2012
Castex Offshore, Inc., Structure Removal, SEA ES/SR 12–190	Eugene Island, Block 320, Lease OCS–G 26040, located 62 miles from the nearest Louisiana shoreline.	7/12/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–163 ...	South Timbalier, Block 52, Lease OCS–G 01241, located 13 miles from the nearest Louisiana shoreline.	7/12/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–187.	Vermilion, Block 26, Lease OCS 00297, located 4 miles from the nearest Louisiana shoreline.	7/12/2012
BP Exploration & Production Inc., Development Operations Coordination Document, SEA S–7530.	Green Canyon, Block 743, located 121 miles from the nearest Louisiana shoreline, south of New Orleans, Louisiana.	7/13/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–012 ...	Ship Shoal, Block 235, Lease OCS–G 23908, located 40 miles from the nearest Louisiana shoreline.	7/13/2012
Mariner Energy, Inc., Structure Removal, SEA ES/SR 12–112 ...	South Marsh Island, Block 106, Lease OCS–G 02279, located 74 miles from the nearest Louisiana shoreline.	7/13/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–058 ...	South Timbalier, Block 139, Lease OCS–G 18040, located 26 miles from the nearest Louisiana shoreline.	7/13/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–035.	Vermilion, Block 26, Lease OCS 00297, located 4 miles from the nearest Louisiana shoreline.	7/13/2012
Badger Oil Corporation, Structure Removal, SEA ES/SR 12–185	High Island, Block A247, Lease OCS–G 30685, located 78 miles from the nearest Louisiana shoreline.	7/16/2012
Shell Offshore Inc., Exploration Plan, SEA N–9643	De Soto Canyon, Blocks 799 & 843 Leases OCS–G 31572 & 23540, respectively, located 109 miles from the nearest Louisiana shoreline, southeast of Venice, Louisiana.	7/17/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–148.	East Cameron, Block 42, Lease OCS–G 02857, located 11 miles from the nearest Louisiana shoreline.	7/17/2012
Walter Oil & Gas Corporation, Structure Removal, SEA ES/SR 12–160.	Eugene Island, Block 143, Lease OCS–G 17973, located 25 miles from the nearest Louisiana shoreline.	7/17/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–150.	Eugene Island, Block 193, Lease OCS–G 00572, located 39 miles from the nearest Louisiana shoreline.	7/17/2012
Castex Offshore, Inc., Structure Removal, SEA ES/SR 12–191	Eugene Island, Block 271, Lease OCS–G 31375, located 60 miles from the nearest Louisiana shoreline.	7/17/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–080.	South Marsh Island, Block 11, Lease OCS–G 01182, located 35 miles from the nearest Louisiana shoreline.	7/17/2012

Activity/Operator	Location	Date
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–174 ...	South Marsh Island, Block 229, Lease OCS 00310, located 12 miles from the nearest Louisiana shoreline.	7/17/2012
Apache Corporation, Structure Removal, SEA ES/SR 11–160 ...	South Marsh Island, Block 58, Lease OCS–G 01194, located 57 miles from the nearest Louisiana shoreline.	7/17/2012
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 12–181.	West Cameron, Block 237, Lease OCS–G 02833, located 40 miles from the nearest Louisiana shoreline.	7/17/2012
GOM Shelf LLC, Structure Removal, SEA ES/SR 12–086	Grand Isle, Block 46, Lease OCS 00132, located 17 miles from the nearest Louisiana shoreline.	7/18/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–151.	South Marsh Island, Block 17, Lease OCS–G 12886, located 40 miles from the nearest Louisiana shoreline.	7/18/2012
Nexen Petroleum U.S.A. Inc., Structure Removal, SEA ES/SR 12–141.	Vermilion, Block 321, Lease OCS–G 02088, located 86 miles from the nearest Louisiana shoreline.	7/18/2012
Nexen Petroleum U.S.A. Inc., Structure Removal, SEA ES/SR 12–155.	Vermilion, Block 340, Lease OCS–G 02091, located 90 miles from the nearest Louisiana shoreline.	7/18/2012
Westport Resources Corporation, Structure Removal, SEA ES/SR 11–224A & 11–225A.	West Cameron, Block 181, Lease OCS–G 01971, located 29 miles from the nearest Louisiana shoreline.	7/18/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–327A & 11–328A.	Eugene Island, Block 42, Lease OCS–G 04858, located 13 miles from the nearest Louisiana shoreline.	7/19/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–189 ..	Galveston, Block 303, Lease OCS–G 04565, located 13 miles from the nearest Texas shoreline.	7/19/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–193 ..	Ship Shoal, Block 239, Lease OCS–G 01025, located 43 miles from the nearest Louisiana shoreline.	7/19/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–194.	South Marsh Island, Block 275, Lease OCS–G 05477, located 32 miles from the nearest Louisiana shoreline.	7/19/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–192.	South Pelto, Block 15, Lease OCS–G 09652, located 11 miles from the nearest Louisiana shoreline.	7/19/2012
Maritech Resources, Inc., Structure Removal, SEA ES/SR 98–056B & 11–298A.	Vermilion, Block 250, Lease OCS–G 23670, located 66 miles from the nearest Louisiana shoreline.	7/19/2012
Marathon Oil Company, Exploration Plan, SEA N–9637	De Soto Canyon, Block 757, Lease OCS–G 31570, located 112 miles from the nearest Louisiana shoreline, southeast of Venice, Louisiana.	7/20/2012
Badger Oil Corporation, Structure Removal, SEA ES/SR 12–184	High Island, Block A264, Lease OCS–G 15805, located 83 miles from the nearest Louisiana shoreline.	7/20/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–178 ...	Ship Shoal, Block 181, Lease OCS–G 04231, located 30 miles from the nearest Louisiana shoreline.	7/20/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–196.	Ship Shoal, Block 56, Lease OCS–G 22695, located 16 miles from the nearest Louisiana shoreline.	7/20/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–195.	South Pelto, Block 5, Lease OCS–G 12027, located 5 miles from the nearest Louisiana shoreline.	7/20/2012
ATP Oil & Gas Corporation, Structure Removal, SEA ES/SR 12–180.	West Cameron, Block 237, Lease OCS–G 02833, located 40 miles from the nearest Louisiana shoreline.	7/20/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–220 ...	West Cameron, Block 71, Lease OCG 00244, located 10 miles from the nearest Louisiana shoreline.	7/20/2012
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 12–136.	Galveston, Block 252, Lease OCS–G 11307, located 13 miles from the nearest Texas shoreline.	7/23/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–119A.	South Marsh Island, Block 17, Lease OCS–G 12886, located 39 miles from the nearest Louisiana shoreline.	7/23/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 12–198	South Pass, Block 28, Lease OCS 00353, located 3 miles from the nearest Louisiana shoreline.	7/23/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 09–195A, 12–197, 12–199, 12–200, 12–201, 12–202, 12–203, 12–204, 12–206, 12–207 & 12–210.	South Pass, Block 28, Leases OCS 00353 & 00694, located 3–4 miles from the nearest Louisiana shoreline.	7/23/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–162 ..	West Cameron, Block 180, Lease OCS–G 00763, located 26 miles from the nearest Louisiana shoreline.	7/23/2012
Apache Deepwater LLC, Exploration Plan, SEA R–5509	Atwater Valley, Blocks 76 & 120, Leases OCS–G 33866 & 33867, respectively, located 80 miles from the nearest Louisiana shoreline, southeast of Plaquemines Parish, Louisiana.	7/25/2012
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 12–138, 12–139 & 12–140.	East Cameron, Block 23, Lease OCS–G 02853, located 3–5 miles from the nearest Louisiana shoreline.	7/25/2012
Merit Energy Company, LLC, Structure Removal, SEA ES/SR 12–133, 12–134, 12–135 & 12–137.	East Cameron, Block 23, Lease OCS–G 02853, located 5 miles from the nearest Louisiana shoreline.	7/25/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 98–013 ...	Vermilion, Block 24, Lease OCS–G 03543, located 7 miles from the nearest Louisiana shoreline.	7/25/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–157.	Eugene Island, Block 242, Lease OCS–G 02898, located 54 miles from the nearest Louisiana shoreline.	7/26/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–172 ...	South Marsh Island, Block 236, Lease OCS 00310, located 12 miles from the nearest Louisiana shoreline.	7/26/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–117.	South Timbalier, Block 81, Lease OCS–G 27155, located 18 miles from the nearest Louisiana shoreline.	7/26/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–188 ..	West Cameron, Block 172, Lease OCS–G 01998, located 26 miles from the nearest Louisiana shoreline.	7/26/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–213.	East Cameron, Block 104, Lease RUE–G 23680, located 30 miles from the nearest Louisiana shoreline.	7/30/2012

Activity/Operator	Location	Date
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–216.	West Cameron, Block 78, Lease OCS–G 19702, located 11 miles from the nearest Louisiana shoreline.	7/30/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 12–103	East Cameron, Block 109, Lease OCS–G 21065, located 27 miles from the nearest Louisiana shoreline.	8/2/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 05–115.	East Cameron, Block 2, Lease OCS–G 10605, located 4 miles from the nearest Texas shoreline.	8/2/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–211.	East Cameron, Block 219, Lease OCS–G 19750, located 63 miles from the nearest Texas shoreline.	8/2/2012
Hilcorp Energy GOM, LLC, Structure Removal, SEA ES/SR 12–186.	High Island, Block 37, Lease OCS–G 15769, located 14 miles from the nearest Louisiana shoreline.	8/2/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–218 ..	Ship Shoal, Block 239, Lease OCS–G 01025, located 41 miles from the nearest Louisiana shoreline.	8/2/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–179 ...	Vermilion, Block 24, Lease OCS–G 03543, located 4 miles from the nearest Louisiana shoreline.	8/3/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 12–168	Eugene Island, Block 277, Lease OCS–G 10744, located 49 miles from the nearest Louisiana shoreline.	8/8/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 12–104	East Cameron, Block 109, Lease OCS–G 21065, located 26 miles from the nearest Louisiana shoreline.	8/9/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 08–142A	East Cameron, Block 111, Lease OCS–G 25944, located 30 miles from the nearest Louisiana shoreline.	8/9/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–212.	East Cameron, Block 122, Lease OCS–G 27042, located 37 miles from the nearest Texas shoreline.	8/9/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 10–002A.	High Island, Block 198, Lease OCS–G 17151, located 27 miles from the nearest Texas shoreline.	8/9/2012
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 12–173 ...	South Marsh Island, Block 217, Lease OCS 00310, located 7 miles from the nearest Louisiana shoreline.	8/9/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–214.	West Cameron, Block 41, Lease OCS–G 17753, located 6 miles from the nearest Texas shoreline.	8/9/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 06–092	Eugene Island, Block 53, Lease OCS 00479, located 13 miles from the nearest Louisiana shoreline.	8/10/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9642.	Walker Ridge, Block 794, located 206 miles from the nearest Louisiana shoreline.	8/23/2012
Bandon Oil and Gas, LP, Structure Removal, SEA ES/SR 11–234.	High Island, Block A447, Lease OCS–G 02360, located 78 miles from the Texas shoreline.	9/4/2012
Hilcorp Energy GOM, LLC, Structure Removal, SEA ES/SR 12–177.	Vermilion, Block 31, Lease OCS–G 02868, located 7 miles from the nearest Louisiana shoreline.	9/4/2012
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 12–219.	Eugene Island, Block 193, Lease OCS–G 00572, located 40 miles from the nearest Louisiana shoreline.	9/5/2012
Bandon Oil and Gas, LP, Structure Removal, SEA ES/SR 11–076.	High Island, Block A447, Lease OCS–G 02360, located 160 miles from the nearest Texas shoreline.	9/5/2012
Apache Corporation, Structure Removal, SEA ES/SR 11–221 ...	High Island, Block A537, Lease OCS–G 22048, located 81 miles from the nearest Texas shoreline.	9/5/2012
PetroQuest Energy, L.L.C., Structure Removal, SEA ES/SR 12–221.	Ship Shoal, Block 71, Lease OCS–G 12347, located 6 miles from the nearest Louisiana shoreline.	9/5/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA R–5597.	Atwater Valley, Blocks 28, 29 & 73, respectively, located 78 miles from the nearest Louisiana shoreline, southeast of Venice, Louisiana.	9/6/2012
Cobalt International Energy, L.P., Exploration Plan, SEA R–5615.	Green Canyon, Blocks 895 & 896, Leases OCS–G 26345 & 31765, respectively, located 136 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	9/6/2012
Exxon Mobil Corporation, Exploration Plan, SEA R–5652	Keathley Canyon, Block 919, located 216 miles from the nearest Louisiana shoreline.	9/6/2012
Tengasco, Inc., Structure Removal, SEA ES/SR 12–223	Chandeleur, Block 27, Lease OCS–G 32266, located 3 miles from the nearest Mississippi shoreline.	9/10/2012
Tengasco, Inc., Structure Removal, SEA ES/SR 12–225	Chandeleur, Block 30, Lease OCS–G 24002, located 7 miles from the nearest Mississippi shoreline.	9/10/2012
Tengasco, Inc., Structure Removal, SEA ES/SR 12–222	Chandeleur, Block 30, Lease OCS–G 24002, located 8 miles from the nearest Mississippi shoreline.	9/10/2012
WesternGeco, LLC, Geological & Geophysical Survey, SEA L12–017.	Located in the Western and Central Planning Areas of the Gulf of Mexico.	9/10/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–208 & 12–209.	South Marsh Island, Block 249, Lease RUE–G 23644, located 19 miles from the nearest Louisiana shoreline.	9/10/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 11–291A.	West Delta, Block 97, Lease RUE–G 30068, located 26 miles from the nearest Louisiana shoreline.	9/10/2012
Energy Partners, Ltd., Structure Removal, SEA ES/SR 12–169	Eugene Island, Block 277, Lease OCS–G 10744, located 51 miles from the nearest Louisiana shoreline.	9/11/2012
Helis Oil & Gas Company, L.L.C., Structure Removal, SEA ES/SR 12–227.	High Island, Block 129, Lease OCS–G 01848, located 27 miles from the nearest Texas shoreline.	9/11/2012
PetroQuest Energy, L.L.C., Structure Removal, SEA ES/SR 12–226.	Ship Shoal, Block 63, Lease OCS 00057, located 4 miles from the nearest Louisiana shoreline.	9/11/2012
PetroQuest Energy, L.L.C., Structure Removal, SEA ES/SR 12–247.	Ship Shoal, Block 87, Lease OCS–G 12349, located 8 miles from the nearest Louisiana shoreline.	9/11/2012

Activity/Operator	Location	Date
Apache Deepwater LLC, Exploration Plan, SEA N–9645	Green Canyon, Block 363, Lease OCS–G 32495, located 101.9 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	9/12/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–260.	Eugene Island, Block 166, Lease OCS–G 22664, located 27 miles from the nearest Louisiana shoreline.	9/13/2012
Global Geophysical Services, Inc., Geological & Geophysical Survey, SEA L10–048.	Located in the Central Planning Area of the Gulf of Mexico	9/16/2012
Dynamic Offshore Resources, LLC, Structure Removal, SEA ES/SR 12–107.	West Delta, Block 58, Lease OCS 00146, located 7 miles from the nearest Louisiana shoreline.	9/17/2012
Shell Offshore Inc., Exploration Plan, SEA S–7574	De Soto Canyon, Block 529, Lease OCS–G 23517, located 83 miles from the nearest Louisiana shoreline, southeast of Venice, Louisiana.	9/18/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–238.	South Pelto, Block 19, Lease OCS 00073, located 7 miles from the nearest Louisiana shoreline.	9/19/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–259.	Vermilion, Block 200, Lease OCS–G 09500, located 53 miles from the nearest Louisiana shoreline.	9/19/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–228.	West Cameron, Block 41, Lease OCS–G 17753, located 6 miles from the nearest Texas shoreline.	9/19/2012
Signal Oil & Gas Company, Structure Removal, SEA ES/SR 12–105 & 12–106.	West Delta, Block 50, Lease OCS–G 05050, located 4 miles from the nearest Louisiana shoreline.	9/19/2012
EC Offshore Properties, Inc., Structure Removal, SEA ES/SR 12–262.	East Cameron, Block 71, Lease OCS–G 13576, located 17 miles from the nearest Louisiana shoreline.	9/20/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–248.	High Island, Block 206, Lease OCS–G 20660, located 26 miles from the nearest Louisiana shoreline.	9/20/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–258.	South Pelto, Block 19, Lease OCS 00073, located 7 miles from the nearest Louisiana shoreline.	9/20/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–244.	Brazos, Block A17, Lease OCS–G 23166, located 38 miles from the nearest Texas shoreline.	9/24/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7569.	East Breaks, Block 645, Lease OCS–G 32822, located 118 miles from the nearest Louisiana shoreline.	9/24/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–245 & 12–246.	Eugene Island, Block 162, Lease OCS–G 11952, located 33 miles from the nearest Louisiana shoreline.	9/24/2012
Shell Offshore Inc., Exploration Plan, SEA R–5685	Garden Banks, Block 427, Lease OCS–G 07493, located 134 miles from the nearest Louisiana shoreline.	9/24/2012
BHP Billiton Petroleum (GOM) Inc., Exploration Plan, SEA R–5663.	Green Canyon, Block 507, located 111 miles from the nearest Louisiana shoreline.	9/24/2012
Badger Oil Corporation, Structure Removal, SEA ES/SR 12–183	High Island, Block A263, Lease OCS–G 13342, located 84 miles from the nearest Louisiana shoreline.	9/24/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–252	Eugene Island, Block 88, Lease OCS–G 10721, located 25 miles from the nearest Louisiana shoreline.	9/26/2012
EMGS Americas, Geological & Geophysical Survey, SEA L12–013.	Located in the Central Planning Area of the Gulf of Mexico	9/26/2012
Apache Corporation, Structure Removal, SEA ES/SR 11–159	South Marsh Island, Block 58, Lease OCS–G 01194, located 57 miles from the nearest Louisiana shoreline.	9/26/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–242.	Vermilion, Block 241, Lease RUE–G 30119, located 64 miles from the nearest Louisiana shoreline.	9/26/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–243.	West Cameron, Block 170, Lease OCS–G 04085, located 24 miles from the nearest Louisiana shoreline.	9/26/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 12–215.	West Cameron, Block 494, Lease OCS–G 15097, located 84 miles from the nearest Texas shoreline.	9/26/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–229.	East Cameron, Block 235, Lease OCS–G 25965, located 64 miles from the nearest Louisiana shoreline.	9/27/2012
BP Exploration & Production Inc., Development Operations Coordination Document, SEA S–7417.	Mississippi Canyon, Block 429, Lease OCS–G 07944, located 56 miles from the nearest Louisiana shoreline, southeast of Plaquemines Parish, Louisiana.	9/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–241.	Ship Shoal, Block 223, Lease OCS–G 01526, located 42 miles from the nearest Louisiana shoreline.	9/27/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–049A.	South Pass, Block 38, Lease OCS–G 21695, located 4 miles from the nearest Louisiana shoreline.	9/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 08–085.	South Pelto, Block 12, Lease OCS 00072, located 10 miles from the nearest Louisiana shoreline.	9/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 08–031.	South Pelto, Block 12, Lease OCS 00072, located 7 miles from the nearest Louisiana shoreline.	9/27/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–249, 12–250, 12–251 & 97–114A.	Vermilion, Block 26, Lease OCS 00297, located 5–6 miles from the nearest Louisiana shoreline.	9/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–263 & 12–264.	Viosca Knoll, Block 203, Lease OCS–G 07890, located 28 miles from the nearest Louisiana shoreline.	9/27/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–230 & 12–231.	Eugene Island, Block 148, Lease OCS–G 13620, located 30 miles from the nearest Louisiana shoreline.	9/28/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–253	Main Pass, Block 90, Lease OCS–G 19853, located 8 miles from the nearest Louisiana shoreline.	9/28/2012

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about the SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 13, 2012.

John Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2012–30084 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0090]

Commercial Wind Leasing and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore North Carolina

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent To Prepare an Environmental Assessment.

SUMMARY: BOEM is publishing this Notice of Intent To Prepare an Environmental Assessment (EA) for the purpose of involving Federal agencies, states, tribes, local governments, offshore wind energy developers, and the public in the Department of the Interior's (DOI) ''Smart from the Start'' wind energy initiative offshore North Carolina. The ''Smart from the Start'' wind energy initiative is designed to identify areas that appear to be suitable for wind energy leasing on the OCS, known as Wind Energy Areas (WEAs) and to obtain public and expert input that will inform DOI's decisionmaking with regard to issuing leases and approving site assessment activities in these areas, in accordance with applicable DOI regulations and the Council on Environmental Quality (CEQ) regulations implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.).*

The ''Smart from the Start'' initiative involves coordinated environmental studies, large-scale planning processes, and expedited review procedures within these areas to achieve an efficient and responsible renewable energy leasing process. More information on the ''Smart from the Start'' initiative can be found at: *http://boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.*

In consultation with other Federal agencies and the BOEM North Carolina Intergovernmental Renewable Energy Task Force, BOEM has identified three areas under consideration for potential future wind energy leasing offshore North Carolina (Call Areas). These Call Areas are identified in the document entitled, *Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina-Call for Information and Nominations (Call),* which is being published concurrently with this Notice. The publication of a Call is the first public step in BOEM's offshore wind planning process for North Carolina, and additional opportunities for public involvement are required before any commercial wind leases would be issued. A commercial lease gives the lessee the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the lessee the right to use the leased area to develop its plans, which BOEM must approve before the lessee can move on to the next stage of the process. See 30 CFR 585.600 and 585.601.

BOEM intends to prepare an EA, which is the subject of this Notice, that will consider the environmental consequences associated with the possible future issuance of commercial wind leases and approving site assessment activities on those leases (within all or some of these Call Areas). BOEM is seeking public input regarding the identification of the alternatives to be considered in the EA, as well as the environmental and/or socioeconomic issues to be analyzed.

Furthermore, section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and its implementing regulations at 36 CFR 800 require Federal agencies to consider the effects of their actions on historic properties, and afford the Advisory Council on Historic Properties an opportunity to comment (36 CFR 800.1). Therefore, BOEM will conduct Section 106 review for the issuance of leases and approval of site assessment activities within some or all of the Call Areas, in coordination with its environmental review. As part of this Section 106 review, BOEM will initiate consultation with state historic preservation officer, tribal officials, and others. With the publication of this Notice, BOEM is reaching out to the general public for comments regarding the identification of historic properties or potential effects to historic properties from leasing and site assessment activities in the Call Areas. Submitted information will allow BOEM to consider the views of the public and document historic preservation concerns early in the Section 106 process.

Authority: This Notice of Intent to prepare an EA is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1340 or *michelle.morin@BOEM.gov.*

SUPPLEMENTARY INFORMATION:

1. The OCS Wind Energy Planning, Leasing and Development Process

There are four key phases in the wind energy planning, leasing and development process on the OCS: (1) Planning and siting; (2) lease issuance; (3) approval of a site assessment plan (SAP); and (4) approval of a construction and operations plan (COP). Publication of the Call and this NOI are steps in the first phase of this process. The second phase, issuance of a commercial renewable energy lease, gives the lessee an exclusive right to submit plans, the approval of which is necessary for a lessee to advance to the next stage of the renewable energy development process. The third phase is the applicant's submission and BOEM's subsequent review and approval of a SAP. Approval of a SAP allows the lessee to construct and install equipment on the leasehold, such as a meteorological tower and/or buoys, to perform site assessment functions. See 30 CFR 585.600–585.601; 585.605–585.618. Site characterization activities are necessary to support a lessee's proposed site assessment activities (*e.g.,* geological and geophysical surveys and core samples) and the lessee must submit the results of such surveys with the supporting data in its SAP. See 30 CFR 585.610. The submission of a SAP is separate from the submission of a COP. After the lessee has collected the additional site characterization and assessment data necessary for a COP, the lessee may submit its COP. The COP would be subject to additional project specific environmental review. The approval of the COP would authorize the construction and operation of a renewable energy generation facility on the lease. See 30 CFR 585.620–585.629.

2. Proposed Action and Scope of Analysis

The proposed action that will be the subject of the EA is the issuance of renewable energy leases within all or some of the Call Areas described in this Notice, and the approval of site assessment activities on those leases (*i.e.,* Phases 2 and 3 of the wind energy planning, leasing and development process). BOEM will also consider in the EA the environmental impacts associated with the site characterization activities that it anticipates lessees might eventually undertake to fulfill the SAP and COP information requirements at 30 CFR 585.610 and 585.626, respectively.

Additional analysis under NEPA will be required before any future decision is made regarding the approval of the construction or operation of any wind energy facility on leases that may be issued within all or some of these Call Areas. If and when a lessee is ready to begin the final phase of renewable energy development, it will submit a COP. If, in the future, a COP is submitted for a particular project on a lease, BOEM would undertake a separate site- and project-specific NEPA analysis and consultations. This specific NEPA analysis would likely take the form of an Environmental Impact Statement (EIS) and would provide additional opportunities for public involvement pursuant to NEPA and the CEQ regulations at 40 CFR 1500–1508. The NEPA process would provide the public and Federal officials with comprehensive site- and project-specific information, which would consider the reasonably foreseeable environmental impacts of the specific project the lessee is proposing. These potential impacts will be taken into account when deciding whether to approve, approve with modification, or disapprove the COP pursuant to 30 CFR 585.628.

Based on the information submitted in response to this Notice and the Call, BOEM will determine the level of interest in the Call Areas and identify the areas that would be appropriate to move forward with in BOEM's offshore wind planning, leasing, and development process. The areas identified will constitute WEA(s) under the ''Smart from the Start'' initiative, and will be the area(s) analyzed in this EA. That step in the process is referred to as Area Identification.

This EA, will consider the environmental consequences associated with reasonably foreseeable leasing scenarios (not development itself), reasonably foreseeable site characterization scenarios within these lease areas (including geophysical, geotechnical, archaeological, and biological surveys), and reasonably foreseeable site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the leases that may be issued within all or some of the Call Areas. At a minimum, two alternatives will be considered: no action (i.e., no issuance of leases or approval of site assessment activities); and the issuance of leases and approval of site assessment activities within the identified portion(s) of the Call Areas. BOEM is therefore soliciting input on these and/or other alternatives, and on the environmental and socioeconomic issues to be considered in this EA related to the potential environmental effects of the activities listed above.

Federal, state, and local government agencies, tribal governments, and other interested parties may assist BOEM in determining the issues, and any additional alternatives, to be analyzed in the EA. Input is also requested on measures (*e.g.,* limitations on activities based on technology, distance from shore, or timing) that could lessen impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment activities taking place in the Call Areas or from support activities taking place outside the Call Areas. Consultation with other Federal agencies, tribal governments, and affected states will be carried out during the EA process and will be completed before a final decision is made on whether any particular lease will be issued or site assessment activities on those leases approved.

If BOEM determines during the EA process that issuing leases and conducting site characterization and assessment activities within the Call Areas would result in significant environmental impacts, BOEM will publish a Notice of Intent to prepare an EIS for the issuance of renewable energy leases and approval of site assessment activities within all or some of these Call Areas. If BOEM determines during the EA process that issuing leases and conducting site characterization and assessment activities within the Call Areas would not result in significant environmental impacts, BOEM will issue a Finding of No Significant Impact (FONSI). After either a FONSI is issued or the EIS process is completed, BOEM may issue one or more renewable energy leases within all or some of these Call Areas. In the event that a particular lease is issued, and the lessee submits a SAP, BOEM will determine whether the EA adequately considers the environmental impacts of the activities proposed in the lessee's SAP. If the analysis in the EA adequately addresses these impacts, then no further NEPA analysis would be required before the SAP is approved. If the EA analysis is inadequate, additional NEPA analysis would be conducted before the SAP could be approved.

3. Information That Will Be Incorporated Into the EA

On November 6, 2007, BOEM published a Notice of Availability (NOA) in the **Federal Register** (72 FR 62,672) of the Programmatic EIS for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final EIS (OCS Report MMS 2007–046) (Programmatic EIS). On February 3, 2012, BOEM published a NOA in the **Federal Register** (77 FR 5560) of the Final EA for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia (OCS EIS/EA BOEM 2012–003) (Mid-Atlantic EA), which addressed activities similar to those to be addressed in the EA for which this Notice is being published.

BOEM will incorporate the environmental and socioeconomic analyses of site characterization and assessment activities from the Programmatic EIS, Mid-Atlantic EA, and other public information to help inform its analysis in this EA. The EA will incorporate the principles of national ocean policy, including comprehensive interagency coordination.

4. Description of the Call Areas

A detailed description of the Call Areas can be found in the Call that is being published concurrently with this Notice.

A map of the Call Area can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.*

5. Cooperating Agencies

BOEM invites Federal, state, and local government agencies, as well as tribal governments, to consider becoming cooperating agencies in the preparation of this EA. CEQ regulations implementing the procedural provisions of NEPA define cooperating agencies as those with ''jurisdiction by law or special expertise'' (40 CFR 1508.5). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling pre-decisional information.

Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the NEPA. These documents are available at: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html.* and: *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input phases of the NEPA process.

6. Comments

Federal, state, local government agencies, tribal governments, and other interested parties are requested to send their written comments regarding environmental issues and the identification of reasonable alternatives related to the proposed action described in this Notice in one of the following ways:

1. Electronically: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2012–0090, then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on North Carolina EA'' to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817.

Comments should be submitted no later than January 28, 2013.

Dated: December 10, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–30091 Filed 12–12–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–807]

Certain Digital Photo Frames and Image Display Devices and Components Thereof; Commission Determination Not To Review an Initial Determination Extending the Target Date and Finding the Remaining Respondent Pandigital, Inc. in Default and in Violation of Section 337; and Request for Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 48) of the presiding administrative law judge (''ALJ''): (1) Extending the target date for completion of the above-captioned investigation by nine days to March 7, 2013; and (2) finding the remaining respondent Pandigital, Inc. (''Pandigital'') of Dublin, California in default and in violation of section 337. The Commission also is requesting written submissions including submissions on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 27, 2011, based on a complaint filed by Technical Properties Limited, LLC (''TPL'') of Cupertino, California. 76 FR 59737–38. The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 (''the '623 patent''); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named twenty respondents including Nextar Inc. of La Verne, California; WinAccord Ltd. of Taipei, Taiwan; and WinAccord U.S.A., Inc. of San Jose, California (collectively, ''the WinAccord respondents''); Aiptek International Inc. (''Aiptek'') of Hsinchu, Taiwan; and Pandigital. All other respondents have been terminated from the investigation by consent order stipulation or settlement agreement. The '623 patent was terminated from the investigation with respect to Pandigital by consent order stipulation. The complaint and notice of investigation were served on all respondents including Aiptek and the WinAccord respondents on September 22, 2011. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney is participating in the investigation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding the WinAccord respondents and Aiptek in default, pursuant to 19 CFR 210.13 and 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause. On January 3 and 9, 2012, respectively, the Commission determined not to review the IDs finding the WinAccord respondents and Aiptek in default.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against the defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 CFR 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47 to Pandigital show cause why it should not be found in default and in violation of section 337 pursuant to 19 CFR 210.17 because respondent did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued the subject ID finding Pandigital in default and in violation of section 337. The ID also extended the target date of the investigation by nine days from February 26, 2013 to March 7, 2013. The ID also contained the ALJ's recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order, cease and desist order, and a bond in the amount of 100 percent of the covered products during the period of Presidential review with respect to Pandigital. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The Commission notes that in the subject ID, the ALJ retroactively extended the target date by nine days, to account for the delay in the issuance of his final ID finding Pandigital in default and in violation of section 337. The delay was caused by TPL's failure to properly serve its motion seeking default against Pandigital. Extension of the target date in this circumstance was not necessary because the Commission did not require additional time to complete this investigation. In any event, we note that an ID extending the target date must be issued in advance of the final ID, rather than retroactively.

Section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission Rule 210.16(c) (19 CFR 210.16(c)) authorize the Commission to order limited relief against respondents, such as Aiptek and the WinAccord respondents, found in default for failure to respond to the complaint and notice of investigation, unless after consideration of the public interest factors, it finds that such relief should not issue. With respect to Pandigital, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. *See* 19 U.S.C. 337(d)(1). Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

The Commission also requests additional briefing from TPL addressing the following issues:

(1) Assuming TPL requests a cease and desist order (''CDO'') against Aiptek, does the evidence support a finding that Aiptek maintains a commercially significant inventory of accused products in the United States or otherwise has significant domestic ties sufficient to warrant imposition of a CDO as to this foreign respondent? *See Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof,* Inv. No. 337–TA–486, Comm'n Op. at 17 (Aug. 19, 2003).

(2) In its previous briefing of March 8 and April 23, 2012, TPL previously asserted that section 337(j)(3) does not permit importation under bond with respect to a defaulting respondent under section 337(g). Does TPL maintain that position?

(3) What evidence does Complainant rely upon in support of a bond amount for Aiptek, Pandigital, and the WinAccord respondents? In your answer, please address the applicability of Order Nos. 9, 12, 16, 18–20, 23, and 28.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding as well as issues concerning whether respondents found in default under section 337(g) may import under bond during the period of Presidential review.

Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 21, 2012. Reply submissions must be filed no later than the close of business on December 28, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the investigation number (''Inv. No. 337–TA–807'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*).

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.17, 210.42–46, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.17, 210.42–46, and 210.50).

By order of the Commission.

Issued: December 7, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–30042 Filed 12–12–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–803]

Certain Dynamic Random Access Memory and NAND Flash Memory Devices and Products Containing Same; Commission Determination Not To Review Initial Determinations Terminating the Investigation as to All Remaining Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (''IDs'') (Order Nos. 70, 71, and 72) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to all remaining respondents based on settlement and license agreements. The remaining respondents included the following: Acer Inc. of Taipei, Taiwan; Acer America Corp. of San Jose, California; ADATA Technology Co., Ltd. of New Taipei City, Taiwan; ADATA Technology (U.S.A.) Co., Ltd. of Hacienda Heights, California; Asustek Computer Inc. of Taipei City, Taiwan; Asus Computer International Inc. of Freemont, California; Dell, Inc. of Round Rock, Texas; Hewlett-Packard Company of Palo Alto, California; Kingston Technology Co., Inc. of Fountain Valley, California; Logitek International S.A. (''LISA'') of Vaud, Switzerland; Logitech, Inc. of Fremont, California; Best Buy Co., Inc. of Richfield, Minnesota; and Wal-Mart Stores, Inc. of Bentonville, Arkansas (collectively, ''the remaining respondents''); Elpida Memory, Inc. of Tokyo, Japan and Elpida Memory (USA) of Sunnyvale, California (collectively, ''Elpida''); and SK Hynix Inc. (f/k/a Hynix Semiconductor Inc.) of Gyeonggi-do, Korea and Hynix Semiconductor America, Inc. of San Jose, California (collectively, ''Hynix'').

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 7, 2011, based on a complaint filed on behalf of the following complainants: Intellectual Ventures Management, LLC; Invention Investment Fund I, L.P.; Invention Investment Fund II, LLC; Intellectual Ventures I LLC; and Intellectual Ventures II LLC, all of Bellevue, Washington. 76 *FR* 55417–18. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory and NAND flash memory devices and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,654,932; 5,963,481; 5,982,696; 5,500,819; and 5,687,132. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named twenty-one respondents which included the following: Nanya Technology Corporation of Taoyuan, Taiwan and Nanya Technology Corporation, USA of Santa Clara, California (collectively, ''Nanya''); Pantech Co., Ltd. of Seoul, Korea and Pantech Wireless, Inc. of Atlanta, Georgia (collectively, ''Pantech''); Elpida; Hynix; Acer Inc.; Acer America Corp.; ADATA Technology Co., Ltd.; ADATA Technology (U.S.A.) Co., Ltd.; Asustek Computer Inc.; Asus Computer International Inc.; Dell, Inc.; Hewlett-Packard Company; Kingston Technology Co., Inc.; LISA; Logitech, Inc.; Best Buy Co., Inc.; and Wal-Mart Stores, Inc.

On December 30, 2011 and July 26, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ's IDs (Order Nos. 18 and 58) terminating the investigation as to Pantech and Nanya based on settlement agreements. On September 20, 2012, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 66) granting LISA's motion for summary determination of non-importation.

On September 20, 2012, Hynix and complainants moved to terminate Hynix from the investigation based on a license agreement. On October 5, 2012, Elpida and complainants moved to terminate the investigation as to Elpida based on a license agreement. Finally, on October 9, 2012, complainants and the remaining respondents moved to terminate the investigation as to the remaining respondents based on settlement agreements. The Commission investigative attorney filed responses supporting each motion. No party opposed the motions.

The ALJ issued the subject IDs (Order Nos. 70, 71, and 72) on November 7 and November 8, 2012, granting the motions for termination of the investigation as to Hynix, Elpida, and the remaining respondents. He found that the motions satisfy Commission rules 210.21(a)(2) and (b)(1). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation as to Hynix, Elpida, and the remaining respondents is in the public interest. No party petitioned for review of the IDs.

The Commission has determined not to review the IDs, and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42(h)).

Issued: December 7, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–30043 Filed 12–12–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

On December 6, 2012, the Department of Justice lodged a proposed Consent Decree for Remedial Design/Remedial Action with the United States District Court for the Northern District of Alabama, Eastern Division in the lawsuit entitled *United States of America* v. *Pharmacia Corporation and Solutia, Inc.,* Civil Action No. 1:02–CV–0749–KOB.

The Consent Decree represents a partial settlement of claims brought by the United States pursuant to the Comprehensive Environmental

Response, Compensation, and Liability Act (CERCLA). The complaint, which was filed on March 25, 2002, contained claims seeking injunctive relief and the recovery of costs incurred by the United States in connection with the release and threatened release of hazardous substances, including polychlorinated biphenyls (''PCBs'') in and around Anniston, Alabama.

The proposed Consent Decree requires Defendant to perform the cleanup for OU–3 which is comprised of the real property on which the Defendants' plant, including the adjacent closed South Landfill and the closed West End Landfill, are located. OU–3 covers approximately 138 acres, with the area of current, active manufacturing operations covering approximately 68 acres of this real property. OU–3 is generally bounded to the north by the Northern Southern and Erie Railroads, to the east by Clydesdale Avenue, to the west by and including the West End Landfill and an Alabama Power Company substation, and to the south by and including the South End Landfill and Highway 202.

The selected remedy for OU–3 is soil capping and expanded groundwater extraction. The objectives of the remedial action for soils include: Reducing risks to area workers and trespassers from direct contact with, inhalation of, or incidental ingestion of contaminants of concern; prevent mitigation and leaching of contaminants of concern in subsurface soils; minimize migration of contaminants of concern in surface soil to surface water; and control future releases of contaminants of concern to ensure protection of public health and the environment. The cleanup goal for surface soil is PCBs of 25 ppm which is within the range recommended for industrial sites in the EPA's 1990 ''Guidance on Remedial Actions for Superfund Sites with PCB Contamination.'' EPA selected a cleanup level of 40 ppm for subsurface dioxins and dioxin-like PCBs. Remedial action will be required where sampling within areas of OU–3 show concentrations above the cleanup levels.

With respect to groundwater, the cleanup objectives include: Prevention of exposure to groundwater from direct contact with, inhalation of, and ingestion of contaminants of concern in groundwater above acceptable levels; prevent future migration of contaminated groundwater beyond the existing known limits of the contamination plume; and restore contaminated groundwater throughout each plume. The groundwater remedy includes subsurface and/or groundwater confirmation sampling, execution of an environmental covenant with the Alabama Department of Environmental Management to restrict land and groundwater use in the OU–3 area; monitoring of wells; optimization and expansion of existing groundwater corrective action, carbon filtration, and institutional controls to ensure long-term effectiveness of the remedy. The Consent Decree further requires the Defendants to reimburse EPA for its oversight of the work performed under the Decree by the Defendants.

The publication of this notice opens a period for public comments on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Pharmacia Corporation and Solutia, Inc.,* D.J. Ref. No. 90–11–2–07135/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments must be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $71.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the proposed Consent Decree without the exhibits, the cost is $12.25.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–30095 Filed 12–12–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Middle Class Tax Relief and Job Creation Act of 2012 State Monitoring

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Middle Class Tax Relief and Job Creation Act of 2012 State Monitoring,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 14, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: States must implement the extension of and modifications to the Emergency Unemployment Compensation (EUC) program—including Reemployment Services and Reemployment (RES) and Eligibility Assessment Activities (REA) for recipients of EUC and the work search audit requirement—in accordance with the Middle Class Job Creation and Tax Relief Act of 2012, Title II, Subtitle C and DOL operating instructions. The ETA is responsible for conducting reviews under the EUC, Work Search Audit, and EUC RES/REA programs. The ETA uses a questionnaire as a monitoring tool to establish which States are most in need of technical assistance and to identify key areas in which technical assistance is necessary. The goal of this questionnaire is to ensure States have plans to implement and to administer the EUC modifications and Work Search Audit and EUC RES/REA program requirements.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0500. The current approval is scheduled to expire on December 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 13, 2012 (77 FR 48173).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0500. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Middle Class Tax Relief and Job Creation Act of 2012 State Monitoring.

OMB Control Number: 1205–0500.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 1,590.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 30, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–30113 Filed 12–12–12; 8:45 am]

BILLING CODE 4510–HW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0037]

OSHA Data Initiative (ODI); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements for OSHA's Data Initiative program.

DATES: Comments must be submitted (postmarked, sent, or received) by February 11, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0037, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2012–0037). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Rex Tingle at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3507, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–1886 or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

To meet many of OSHA's program needs, OSHA is proposing to continue its collection of occupational injury and illness data and information on the number of workers employed and the number of hours worked from establishments in portions of the private sector and from some state and local government agencies. OSHA will collect the data on an annual basis from up to 100,000 employers already required to create and maintain records pursuant to 29 CFR part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of this data collection is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Special Issues for Comment

Public comment is invited on all issues raised by this **Federal Register** Notice. OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

This notice requests public comments on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Initiative program.

Type of Review: Extension of a currently approved collection.

Title: OSHA Data Initiative (ODI).

OMB Control Number: 1218–0209.

Affected Public: Business or other for-profits; Farms; and State, Local and Tribal Government.

Number of Respondents: 100,000.

Frequency: Annually.

Average Time per Response: 10 minutes (.17 hour).

Estimated Total Burden Hours: 16,667.

Estimated Cost (Operation and Maintenance): $439,509.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and OSHA docket number for the ICR (Docket No. OSHA–2012–0037). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available through the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (72 FR 55355).

Signed at Washington, DC, on December 7, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–30044 Filed 12–12–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

RIN 1235–0024

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3056(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collection: Work-Study Program of the Child Labor Regulations (WSP) Regulations 29 CFR Section 570.35b. A copy of the proposed information request can be obtained by contacting the office listed below in the

FOR FURTHER INFORMATION CONTACT section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 11, 2013.

ADDRESSES: You may submit comments identified by Control Number 1235–0024, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice must be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division of the Department of Labor administers the Fair Labor Standards Act. Section 3(l) of the Act establishes a minimum age of 16 years for most nonagricultural employment, but allows the employment of 14- and 15-year-olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to: (1) Periods that will not interfere with the minor's schooling; and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c) requires all covered employers to make, keep, and preserve records of their employees' wages, hours, and other conditions and practices of employment. Section 11(c) authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. The regulations set forth reporting requirements that include a Work Study Program application and written participation agreement. In order to utilize the child labor work study provisions, § 570.35(b) requires a local public or private school system to file with the Wage and Hour Division Administrator an application for approval of a Work Study Program as one that does not interfere with the schooling or health and well-being of the minors involved. The regulations also require preparation of a written participation agreement for each student participating in a Work Study Program and that the teacher-coordinator, employer and student each sign that agreement.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an approval for the extension of this information collection that requires the submission of an application and approval of a Work Study Program and completion and submission of a written participation agreement in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Work-Study Program of the Child Labor Regulations (WSP) Regulations 29 CFR Section 570.35b.

OMB Number: 1235–0024

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms.

Total Respondents: WSP applications: 30.

Written Participation Agreements: 1500.

Total Annual Responses: WSP Applications: 30.

Written Participation Agreements: 3000.

Estimated Total Burden Hours: 1586.

Estimated Time per Response: WSP application: 121 minutes.

Written Participation Agreement: 61 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $15.

Total Burden Costs (operation/maintenance): $38,508.

Dated: December 10, 2012.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2012–30115 Filed 12–12–12; 8:45 am]

BILLING CODE 4510–27–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from October 1, 2012, to October 31, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes annually a consolidated listing of all Schedule A, B, and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

The following Schedule A authority was approved in October:

11. Department of Homeland Security (Sch. A, 213.3111)

(d) General

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2013.

Schedule B

No schedule B authorities to report during October 2012.

Schedule C

The following Schedule C appointing authorities were approved during October 2012.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF COMMERCE	Office of the Assistant Secretary for Economic Development.	Special Advisor	DC120158	10/2/2012
	Office of the General Counsel.	Deputy General Counsel for Strategic Initiatives.	DC130001	10/3/2012
	Assistant Secretary for Market Access and Compliance.	Deputy Director, Office of Advisory Committees.	DC130002	10/12/2012
DEPARTMENT OF DEFENSE	Office of the Under Secretary of Defense.	Special Assistant for Personnel and Readiness.	DD120126	10/17/2012
DEPARTMENT OF EDUCATION	Office of Innovation and Improvement.	Confidential Assistant	DB120102	10/2/2012
	Office of the Secretary	Chief of Staff	DB120090	10/12/2012
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB120103	10/12/2012
DEPARTMENT OF ENERGY	Assistant Secretary for Energy Efficiency and Renewable Energy.	Director of Legislative Affairs.	DE120145	10/2/2012
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist.	DE120143	10/11/2012
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Senior Advisor	DH120143	10/2/2012
DEPARTMENT OF HOMELAND SECURITY	Office of the Assistant Secretary for Intergovernmental Affairs.	Confidential Assistant	DM130009	10/17/2012
	Office of the Assistant Secretary for Policy.	Chief of Staff	DM130011	10/17/2012
DEPARTMENT OF JUSTICE	Civil Division	Counsel	DJ120102	10/2/2012
	Office of Public Affairs	Public Affairs Specialist	DJ120103	10/2/2012
	Office of Public Affairs	Public Affairs Specialist	DJ130004	10/19/2012
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Senior Counselor	DL120087	10/2/2012
DEPARTMENT OF STATE	Bureau for Education and Cultural Affairs.	Special Assistant	DS120121	10/4/2012
	Bureau of Economic and Business Affairs.	Staff Assistant	DS120122	10/11/2012
	Bureau of Legislative Affairs.	Legislative Management Officer.	DS120118	10/14/2012
	Bureau of Legislative Affairs.	Legislative Management Officer.	DS130002	10/15/2012
DEPARTMENT OF VETERANS AFFAIRS	Office of the Secretary and Deputy.	Special Assistant	DV130007	10/12/2012

The following Schedule C appointing authorities were revoked during October 2012.

Agency	Organization	Position title	Authorization No.	Vacate date
DEPARTMENT OF COMMERCE	Office of Executive Secretariat.	Special Assistant	DC110074	10/6/12

Agency	Organization	Position title	Authorization No.	Vacate date
DEPARTMENT OF EDUCATION	Office of Innovation and Improvement.	Confidential Assistant	DB110104	10/6/12
	Office of Elementary and Secondary Education.	Confidential Assistant	DB110107	10/6/12
	Office of Elementary and Secondary Education.	Special Assistant	DB120061	10/6/12
DEPARTMENT OF ENERGY	Office of the Deputy Secretary.	Special Assistant	DE110108	10/14/12
DEPARTMENT OF HOMELAND SECURITY	Office of the Assistant Secretary for Policy.	Senior Advisor to the Assistant Secretary for Policy.	DM100123	10/20/12
DEPARTMENT OF JUSTICE	Office of Public Affairs	Press Assistant	DJ110121	10/20/12
DEPARTMENT OF THE AIR FORCE	Office of the Under Secretary.	Special Assistant	DF100056	10/20/12
ENVIRONMENTAL PROTECTION AGENCY	Office of the Associate Administrator for External Affairs and Environmental Education.	Special Assistant to the Associate Administrator.	EP110019	10/7/12
OFFICE OF MANAGEMENT AND BUDGET	Communications	Specialist for Strategic Planning and Communications.	BO110032	10/20/12
OFFICE OF THE SECRETARY OF DEFENSE	Office of the Assistant Secretary of Defense (Asian And Pacific Security Affairs).	Special Assistant to the Assistant Secretary of Defense.	DD090243	10/20/12
	Office of Principal Deputy Under Secretary for Policy.	Special Assistant to the Principal Deputy Under Secretary of Defense.	DD090213	10/21/12

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–30124 Filed 12–12–12; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations plans to meet on the following dates—

Wednesday, January 16, 2013
Wednesday, February 20, 2013
Wednesday, March 20, 2013

The meetings will start at 10 a.m. and will be held in Room 1350, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC, 20415. Interested parties should consult the Council Web site at *www.lmrcouncil.gov* for the latest information on Council activities, including changes in meeting dates.

The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, ''Creating Labor-Management Forums to Improve Delivery of Government Services,'' which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

At its meetings, the Council will continue its work in promoting cooperative and productive relationships between labor and management in the executive branch, by carrying out the responsibilities and functions listed in Section 1(b) of the Executive Order. The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

FOR FURTHER INFORMATION CONTACT: Tim Curry, Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street NW., Room 7H28, Washington, DC 20415. Phone (202) 606–2930 or email at *PLR@opm.gov.*

For the National Council.

John Berry,

Director.

[FR Doc. 2012–30126 Filed 12–12–12; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30297; File No. 812–14047]

Lord, Abbett & Co. LLC, et al.; Notice of Application

December 6, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Lord, Abbett & Co. LLC (''Lord Abbett''), Lord Abbett Distributor

LLC (''Lord Abbett Distributor''), and Lord Abbett Global Fund, Inc., Lord Abbett Investment Trust, and Lord Abbett Securities Trust (each, a ''Company'', and collectively, the ''Companies'').

DATES: *Filing Dates:* The application was filed on June 26, 2012, and amended on October 26, 2012, October 26, 2012, and November 30, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Lord Abbett, 90 Hudson Street, Jersey City, NJ 07302.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Lord Abbett Global Fund, Inc. is organized as a Maryland corporation; Lord Abbett Investment Trust and Lord Abbett Securities Trust each are organized as a Delaware statutory trust. Each Company is registered under the Act as an open-end management investment company. Lord Abbett, a Delaware limited liability company, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and serves as investment adviser to each Company. Lord Abbett Distributor is organized as a New York limited liability company, and is a registered broker–dealer under the Securities Exchange Act of 1934, as amended (''1934 Act''); Lord Abbett Distributor is the principal underwriter of each Company.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of each Company and of any other registered open-end management investment company that (i) Is advised by Lord Abbett or any person controlling, controlled by or under common control with Lord Abbett (any such adviser or Lord Abbett, an ''Adviser'') and (ii) is in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Companies and invests in other registered open-end management investment companies in that same group (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1] Applicants also request that the order exempt any entity, including any entity controlled by or under common control with an Adviser, that in the future acts as principal underwriter, or broker or dealer if registered under the 1934 Act, with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of directors or trustees, as the case may be, will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that they may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30052 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30298; File No. 812–14055]

PNC Capital Advisors, LLC, et al.; Notice of Application

December 6, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: PNC Capital Advisors, LLC (''PNC Capital Advisors''), PNC Funds and PNC Advantage Funds (together, the ''Trusts''), and PNC Funds Distributor, LLC (''Distributor'').

FILING DATES: The application was filed on July 13, 2012, and amended on November 26, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; PNC Capital Advisors and the Trusts, One East Pratt Street, 5th Floor East, Baltimore, MD 21202; and the Distributor, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trusts are organized as Delaware statutory trusts and registered under the Act as open-end management investment companies. PNC Capital Advisors, the Trusts' investment adviser, is organized as a Delaware limited liability company and is a registered investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). The Distributor is organized as a Delaware limited liability company, and is a registered broker–dealer under the Securities Exchange Act of 1934, as amended (''1934 Act''); the Distributor serves as the principal underwriter to the Trusts.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trusts and any other registered open-end management investment company or series thereof that (i) is advised by PNC Capital Advisors or any person controlling, controlled by or under common control with PNC Capital Advisors (any such adviser or PNC Capital Advisors, an ''Adviser'') and (ii) is in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trusts and invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1] Applicants also request that the order exempt any entity, including any entity controlled by or under common control with an Adviser, that in the future acts as principal underwriter, or broker or dealer if registered under the 1934 Act, with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act, or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that they may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30053 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30296; File No. 812–14040]

Hatteras Variable Trust, et al.; Notice of Application

December 6, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act''), seeking exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Hatteras Variable Trust (''Trust'') and Hatteras Alternative Mutual Funds (''Hatteras'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder in cases where a life insurance company separate account supporting variable life insurance contracts (''VLI Accounts'') holds shares of an existing portfolio of the Trust (an ''Existing Fund'') or a ''Future Fund,'' as defined below (any Existing Fund or Future Fund is referred to herein as a ''Fund,'' and collectively, the ''Funds''), and one or more of the following other types of investors also hold shares of the Funds: (i) Any life insurance company separate account supporting variable annuity contracts (''VA Accounts''); (ii) any VLI Account; (iii) trustees of qualified group pension or group retirement plans (''Plans'' or ''Qualified Plans'') outside the separate account context; (iv) the investment adviser or any subadviser to a Fund or affiliated persons of the adviser or subadviser (representing seed money investments in the Fund) (''Advisers''); and (v) any general account of an insurance company depositor of VA Accounts and/or VLI Accounts and affiliated persons of such insurance company (''General Accounts''). As used herein, a Future Fund is any investment company (or investment portfolio or series thereof), other than an Existing Fund, designed to be sold to VA Accounts and/or VLI Accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment subadvisers, investment managers, administrators, principal underwriters or sponsors.

DATES: *Filing Date:* The application was filed on June 4, 2012, and amended and restated on October 2, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 31, 2012, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Joshua B. Deringer, Esq., Drinker Biddle & Reath LLP, One Logan Square, Ste. 2000, Philadelphia, PA 19103–6996. Copy to J. Michael Fields, Hatteras Alternative Mutual Funds, LLC, 8540 Colonnade Center Drive, Suite 401, Raleigh, NC 27615.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Michael Kosoff, Branch Chief, Office of Insurance Products, Division of

Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company (File No. 811–22660) and is currently comprised of one Existing Fund: Hatteras Alpha Hedged Strategies Variable Fund. The Trust has registered a class of shares of the Existing Fund under the Securities Act of 1933 (the ''1933 Act'') (File No. 333–179263) on Form N–1A. The Trust may in the future establish additional Funds and additional classes of shares for any of the Funds. Shares of the Trust will not be offered to the general public.

2. Hatteras serves as the investment adviser to the Trust and the Existing Fund. Subject to the authority of the Board of Trustees of the Trust, Hatteras is responsible for the overall management of the business affairs of the Trust and manages the investment operations of the Existing Fund, including the purchase, retention and disposition of securities in accordance with the Fund's investment objective.

3. The Existing Fund proposes, on their own behalf and on behalf of Future Funds, to offer their shares to VLI and VA Accounts of various life insurance companies (''Participating Insurance Companies'') to serve as investment media to support variable life insurance contracts and variable annuity contracts (together, ''Variable Contracts'') issued through such accounts. Each VLI Account and VA Account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the insurance company's state of domicile. If a VLI Account or VA Account is registered as an investment company, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes such a registered VLI Account or VA Account is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

4. There are currently no Participating Insurance Companies.

5. The Funds will sell their shares to VLI and VA Accounts only if each Participating Insurance Company sponsoring such a VLI or VA Account enters into a participation agreement with the Funds. The participation agreements define or will define the relationship between each Fund and each Participating Insurance Company and memorialize or will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI or VA Account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of Variable Contracts issued through such Accounts. The role of the Funds under this arrangement, with regard to the federal securities laws, will consist of offering and selling shares of the Funds to the separate accounts and fulfilling any conditions that the Commission may impose in granting the requested order.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same Participating Insurance Company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more Participating Insurance Companies that are not affiliated persons of each other is referred to herein as ''shared funding.''

7. Applicants propose that the Existing Fund and any Future Fund may offer and sell their shares directly to Qualified Plans and to the Fund's Adviser or General Account of a Participating Insurance Company.

8. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts, Qualified Plans, Advisers and General Accounts is referred to herein as ''extended mixed funding.''

Applicants' Legal Analysis

1. Section 9(a) of the Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any investment company, including a unit investment trust, if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the Act. Sections 13(a), 15(a), and 15(b) of the Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting certain VLI Contracts and to their life insurance company depositors under limited circumstances, as described in the application. VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) if shares of the Fund are held by a VLI Account through which certain VLI Contracts are issued, a VLI Account of an unaffiliated Participating Insurance Company, an unaffiliated Adviser, any VA Account, a Qualified Plan or a General Account. Accordingly, Applicants request an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder in cases where certain VLI Account holds shares of the Funds and one or more of the following types of investors also hold shares of the Funds: (i) VA Accounts and VLI Accounts (supporting scheduled premium or flexible premium VLI Contracts) of affiliated and unaffiliated Participating Insurance Companies; (ii) Qualified Plans; (iii) Advisers; and/or (iv) General Accounts.

3. Applicants maintain that there is no policy reason for the sale of Fund shares to Qualified Plans, Advisers or General Accounts to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Nonetheless, Rule 6e–2 and Rule 6e–3(T) each specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered *exclusively* to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans, Advisers and General Accounts while allowing Participating Insurance Companies and their VA Accounts and VLI Accounts to enjoy the benefits of the relief granted under Rule 6e-2(b)(15) and Rule 6e–3(T)(b)(15). Applicants note that if the Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be

necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to Qualified Plans, Advisers or General Accounts or to a registered investment company's ability to sell its shares to such purchasers.

4. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Funds may also sell their shares to Qualified Plans, Advisers and General Accounts. Rather, Applicants submit that the proposed sale of shares of the Funds to these purchasers may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

5. For the reasons explained below, Applicants have concluded that investment by Qualified Plans, Advisers and General Accounts in the Funds should not increase the risk of material irreconcilable conflicts between owners of VLI Contracts and other types of investors or between owners of VLI Contracts issued by unaffiliated Participating Insurance Companies.

6. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request exemptions for a class consisting of Participating Insurance Companies and their separate accounts investing in the Existing Fund and Future Funds, as well as their principal underwriters, that currently invest or in the future will invest in the Funds.

7. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Section 9(a)(3) of the Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed funding, extended mixed funding and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying investment company.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed funding, extended mixed funding and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its variable life insurance contract owners with respect to the investments of an underlying investment company, or any contract between such an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

10. The Applicants represent that the sale of Fund shares to Qualified Plans, Advisers or General Accounts will not have any impact on the exemptions requested herein regarding the disregard of pass-through voting rights. Shares sold to Qualified Plans will be held by such Plans. The exercise of voting rights by Plans, whether by trustees, participants, beneficiaries, or investment managers engaged by the Plans, does not raise the type of issues respecting disregard of voting rights that are raised by VLI Accounts. With respect to Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons as discussed in the application.

11. Similarly, Advisers and General Accounts are not subject to any pass-through voting rights. Accordingly, unlike the circumstances surrounding VLI Account and VA Account investments in shares of the Funds, the issue of the resolution of any material irreconcilable conflicts with respect to voting is not present with respect to Advisers or General Accounts of Participating Insurance Companies.

12. Applicants recognize that the prohibitions on mixed and shared funding might raise concerns regarding possible different investment motivations among investors. When Rule 6e–2 was first adopted, variable annuity separate accounts could invest in mutual funds whose shares were also offered to the general public. However, now, under the tax code any underlying fund, including the Funds, that sells shares to VA Accounts or VLI Accounts, would, in effect, be precluded from also selling its shares to the public. Consequently, the Funds may not sell their shares to the public.

13. Applicants assert that the rights of an insurance company on its own initiative or on instructions from a state insurance regulator to disregard the voting instructions of owners of Variable Contracts is not inconsistent with either mixed funding or shared funding. Applicants state that The National Association of Insurance Commissioners Variable Life Insurance Model Regulation (the ''NAIC Model Regulation'') suggests that it is unlikely that insurance regulators would find an underlying fund's investment policy, investment adviser or principal underwriter objectionable for one type of Variable Contract but not another type.

14. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulator could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. However, the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the

potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected Participating Insurance Company will be required to withdraw its separate account investments in the relevant Fund. This requirement will be provided for in the participation agreement that will be entered into by Participating Insurance Companies with the relevant Fund.

15. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give Participating Insurance Companies the right to disregard the voting instructions of VLI Contract owners in certain circumstances. This right derives from the authority of state insurance regulators over VLI Accounts and VA Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), a Participating Insurance Company may disregard VLI Contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by such Contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

16. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the voting instructions of a majority of VLI Contract owners. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of VLI Contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the relevant Fund's election, to withdraw its VLI Accounts' and VA Accounts' investments in the relevant Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the participation agreement entered into by the Participating Insurance Companies with the relevant Fund.

17. Applicants assert that there is no reason why the investment policies of a Fund would or should be materially different from what these policies would or should be if the Fund supported only VA Accounts or VLI Accounts, whether flexible premium or scheduled premium VLI Contrasts. Each type of insurance contract is designed as a long-term investment program.

18. Each Fund will be managed to attempt to achieve its specified investment objective, and not favor or disfavor any particular Participating Insurance Company or type of insurance contract. There is no reason to believe that different features of various types of Variable Contracts will lead to different investment policies for each or for different VLI Accounts and VA Accounts. The sale of Variable Contracts and ultimate success of all VA Accounts and VLI Accounts depends, at least in part, on satisfactory investment performance, which provides an incentive for each Participating Insurance Company to seek optimal investment performance.

19. Furthermore, no single investment strategy can be identified as appropriate to a particular Variable Contract. Each "pool" of VLI Contract and VA Contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. A Fund supporting even one type of Variable Contract must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic support for the continuation of the Funds. Mixed and shared funding will broaden the base of potential Variable Contract owner investors, which may facilitate the establishment of additional Funds serving diverse goals.

20. Applicants do not believe that the sale of the shares to Plans, Advisers or General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between owners of VLI Contracts and VA Contracts. Applicants submit that either there are no conflicts of interest or that there exists the ability by the affected parties to resolve such conflicts consistent with the best interests of VLI Contract owners, VA Contract owners and Plan participants.

21. Applicants considered whether there are any issues raised under the Code, Treasury Regulations, or Revenue Rulings thereunder, if Qualified Plans, VA Accounts, VLI Accounts, Advisers and General Accounts all invest in the same Fund. Applicants have concluded that neither the Code, nor the Treasury Regulations nor Revenue Rulings thereunder, present any inherent conflicts of interest if Plans, VLI Accounts, and VA Accounts all invest in the same Fund.

22. Applicants note that, while there are differences in the manner in which distributions from VLI Accounts and Qualified Plans are taxed, these differences have no impact on the Funds. When distributions are to be made, and a VLI Account or Plan is unable to net purchase payments to make distributions, the VLI Account or Plan will redeem shares of the relevant Fund at its net asset values in conformity with Rule 22c–1 under the Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will then make distributions in accordance with the terms of its VLI Contract and a Plan will then make distributions in accordance with the terms of the Plan.

23. Applicants considered whether it is possible to provide an equitable means of giving voting rights to Variable Contract owners, Plans, Advisers and General Accounts. In connection with any meeting of Fund shareholders, the Fund will inform each Participating Insurance Company (with respect to its separate accounts and general account), Adviser, and Qualified Plan of its share holdings and provide other information necessary for such shareholders to participate in the meeting (*e.g.,* proxy materials). Each Participating Insurance Company then will solicit voting instructions from owners of VLI Contracts and VA Contracts in accordance with Rules 6e–2 or 6e–3(T), or Section 12(d)(1)(E)(iii)(aa) of the Act, as applicable, and its participation agreement with the relevant Fund. Shares of a Fund that are held by an Adviser or a General Account will generally be in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights. However, an Adviser or General Account will vote its shares in such other manner as may be required by the Commission or its staff. Shares held by Plans will be voted in accordance with applicable law. The voting rights provided to Plans with respect to the shares would be no different from the voting rights that are provided to Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Plan's decision to

disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

24. Applicants do not believe that the ability of a Fund to sell its shares to a Qualified Plan, Adviser or General Account gives rise to a senior security as defined by Section 18(g) of the Act. Regardless of the rights and benefits of participants under Plans or owners of Variable Contracts, VLI Accounts, VA Accounts, Qualified Plans, Advisers and General Accounts only have, or will only have, rights with respect to their respective shares of a Fund. These parties can only redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

25. Applicants do not believe that the veto power of state insurance commissioners over certain potential changes to Fund investment objectives approved by Variable Contract owners creates conflicts between the interests of such owners and the interests of Plan participants, Advisers or General Accounts. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Their interests and opinions may differ, but this does not mean that inherent conflicts of interest exist between or among such shareholders or that occasional conflicts of interest that do occur between or among them are likely to be irreconcilable.

26. Although Participating Insurance Companies may have to overcome regulatory impediments in redeeming shares of a Fund held by their separate accounts, Applicants state that the Plans and participants in participant-directed Plans can make decisions quickly and redeem their shares in a Fund and reinvest in another investment company or other funding vehicle without impediments, or as is the case with most Plans, hold cash pending suitable investment. As a result, conflicts between the interests of Variable Contract owners and the interests of Plans and Plan participants can usually be resolved quickly since the Plans can, on their own, redeem their Fund shares. Advisers and General accounts can similarly redeem their shares of a Fund and make alternative investments at any time.

27. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of Variable Contract owners and Plan participants from future changes in the federal tax laws than that which already exists between VLI Contract owners and VA Contract owners.

28. Applicants recognize that the foregoing is not an all-inclusive list, but rather is representative of issues that they believe are relevant to this Application. Applicants believe that the sale of Fund shares to Qualified Plans would not increase the risk of material irreconcilable conflicts between the interests of Plan participants and Variable Contract owners or other investors. Further, Applicants submit that the use of the Funds with respect to Plans is not substantially dissimilar from each Fund's current and anticipated use, in that Plans, like separate accounts, are generally long-term investors.

29. Applicants assert that permitting a Fund to sell its shares to an Adviser or to the General Account of a Participating Insurance Company for the purpose of obtaining seed money will enhance management of each Fund without raising significant concerns regarding material irreconcilable conflicts among different types of investors.

30. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding vehicle, certain insurers' lack of experience with respect to investment management, and the lack of name recognition by the public of certain insurance companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of the Funds as a common investment vehicle for Variable Contracts would reduce or eliminate these concerns. Mixed and shared funding should also provide several benefits to owners of Variable Contracts by eliminating a significant portion of the costs of establishing and administering separate underlying funds.

31. Applicants state that the Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Funds' Adviser, but also from the potential cost efficiencies and investment flexibility afforded by larger pools of funds. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts. This should result in increased competition with respect to both Variable Contract design and pricing, which can in turn be expected to result in more product variety. Applicants also assert that sale of shares in a Fund to Qualified Plans, in addition to VLI Accounts and VA Accounts, will likewise result in an increased amount of assets available for investment in a Fund.

32. Applicants also submit that, regardless of the type of shareholder in a Fund, an Adviser is or would be contractually and otherwise obligated to manage the Fund solely and exclusively in accordance with the Fund's investment objectives, policies and restrictions, as well as any guidelines established by the Fund's Board of Trustees (the ''Board'').

33. Applicants assert that sales of Fund shares, as described above, will not have any adverse federal income tax consequences to other investors in such a Fund.

34. In addition, Applicants assert that granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions which shall apply to the Funds as well as any Future Fund that relies on the order:

1. A majority of the Board of each Fund will consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application, or by future rule.

2. The Board will monitor a Fund for the existence of any material irreconcilable conflict between and among the interests of the owners of all VLI Contracts and VA Contracts and participants of all Plans investing in the Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and Plans or Plan participants; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in a Fund), any investment adviser to a Fund, and any Plan that executes a participation agreement upon its becoming an owner of 10% or more of the net assets of a Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each Participant will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreement with a Fund, and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Plans under their participation agreement with a Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their VLI Accounts or VA Accounts from the Fund and reinvesting such assets in a different investment vehicle, including another Fund; (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* VA Contract owners or VLI Contact owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of the Plans from the affected Fund and reinvesting them in a different investment medium; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Fund, to withdraw such Participating Insurance Company's VLI Account and VA Account investments in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their participation agreement with a Fund, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as applicable, Plan participants.

For purposes of this Condition 4, a majority of the disinterested trustees of the Board of a Fund will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Fund or its investment adviser be required to establish a new funding vehicle for any Variable Contract or Plan. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Plan will be required by this Condition 4 to establish a new funding vehicle for the Plan if: (a) A majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Plan, the Plan trustee makes such decision without a Plan participant vote.

5. The determination by the Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners whose Contracts are issued through registered VLI Accounts or registered VA Accounts for as long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. However, as to Variable Contracts issued through VA Accounts or VLI Accounts not registered as investment companies under the Act, pass-through voting privileges will be extended to owners of such Contracts to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote the shares of each Fund held in their VLI Accounts and VA Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each of their VLI and VA Accounts investing in a Fund calculates voting privileges in a manner consistent

with all other Participating Insurance Companies investing in that Fund.

The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their participation agreement with the Fund. Each Participating Insurance Company will vote shares of each Fund held in its VLI or VA Accounts for which no timely voting instructions are received, as well as shares attributed to it, in the same proportion as those shares for which voting instructions are received. Each Plan will vote as required by applicable law, governing Plan documents and as provided in this Application.

7. As long as the Commission continues to interpret the Act as requiring that pass-through voting privileges be provided to Variable Contract owners, a Fund Adviser or any General Account will vote its respective shares of the Fund in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that such an Adviser or General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate thereunder.

9. A Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any seed capital from its Adviser or from the General Account of a Participating Insurance Company.

10. Each Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Fund will disclose, in its prospectus that: (a) Shares of the Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans; (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Fund and the interests of Plan participants investing in the Fund, if applicable, may conflict; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Fund such reports, materials or data as the Board reasonably may request so that the trustees may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their participation agreement with the Fund.

13. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan an owner of 10 percent or more of the net assets of the Fund unless the Plan executes an agreement with the Fund governing participation in the Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

Conclusion

Applicants submit, for all the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–30051 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30299; 812–13726]

T. Rowe Price Associates, Inc., et al.; Notice of Application

December 7, 2012.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: T. Rowe Price Associates, Inc. ("TRP"), T. Rowe Price Institutional Income Funds, Inc. (the "Corporation") and T. Rowe Price Investment Services, Inc. (the "Distributor").

Summary of Application: Applicants request an order that permits: (a) Actively managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Shares in-kind in a master-feeder structure.

Filing Dates: The application was filed on December 4, 2009, and amended on February 26, 2010, December 30, 2010, May 7, 2012, September 24, 2012, and December 4, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 31, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Corporation is organized as a Maryland corporation and is registered as an open-end management investment company under the Act. The Corporation will initially offer one actively-managed investment series: T. Rowe Price Diversified Bond ETF (''Initial Fund''). The investment objective of the Initial Fund will be to achieve positive total returns with an emphasis on income.

2. The Adviser will be the investment adviser to each Fund. TRP is and any other Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser may enter sub-advisory agreements with one or more investment advisers to serve as sub-advisers to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. TRIPS, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'' and such persons registered under the Exchange Act, a ''Broker'') will serve as distributor (''Distributor'') for the Funds. Applicants request that the order also apply to any other Distributor to the Funds that complies with the terms and conditions of the application.

3. Applicants are requesting relief to permit the Corporation to create and operate the Initial Fund that offers Shares redeemable in large aggregations only (''ETF Relief''). Applicants request that the ETF Relief apply to the Initial Fund and to any future series of the Corporation or any other registered open-end management company that (a) is advised by TRP or an entity controlling, controlled by, or under common control with TRP (collectively, the ''Adviser''), and (b) utilizes active management investment strategies (''Future Funds'').[1] The Initial Fund and Future Funds together are the ''Funds.'' Each Fund will consist of a portfolio of securities and other assets (''Portfolio Instruments'').[2] Funds may invest in ''Depositary Receipts.'' A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.[3] Each Fund will operate as an actively managed exchanged-traded fund (''ETF''). In addition, each Fund may operate as an acquiring fund in a fund of funds structure (''FOF''), as an acquired fund in a fund of funds structure (''Non-FOF''), or as a feeder fund in a master-feeder structure (''Feeder Fund'').[4]

4. Applicants also request that pursuant to section 12(d)(1)(J) the order permit certain investment companies registered under the Act to acquire Shares of a Non-FOF beyond the limitations in section 12(d)(1)(A) and permit a Non-FOF, the Distributor, and any Brokers to sell Shares beyond the limitations in section 12(d)(1)(B) (''12(d)(1) Relief'').[5] Applicants request that the 12(d)(1) Relief apply to each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Non-FOFs within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into an Acquiring Fund Agreement (defined below) with a Non-FOF (such management investment companies, ''Acquiring Management Companies,'' such unit investment trusts, ''Acquiring Trusts,'' and Acquiring Management Companies and Acquiring Trusts together, ''Acquiring Funds''). The 12(d)(1) Relief would not apply to any Fund that is, either directly or through a master-feeder structure, acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits in section 12(d)(1)(A) of the Act.

5. Applicants further request that the order permit each Feeder Fund to acquire securities of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitation in section 12(d)(1)(A) and permit the Master Fund and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) (''Feeder Relief''). Applicants may structure certain Funds as Feeder Funds to generate economies of scale and tax

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the order only to invest in a Non-FOF (as defined below) and not in any other registered investment company.

[2] If a Fund (or in the case of a Feeder Fund, its Master Fund, as defined below) invests in derivatives: (a) The Board periodically will review and approve (i) the Fund's (or in the case of a Feeder Fund, its Master Fund's) use of derivatives and (ii) how the Fund's investment adviser assesses and manages risk with respect to the Fund's (or in the case of a Feeder Fund, its Master Fund's) use of derivatives; and (b) in the Fund's disclosure of its (in the case of a Feeder Fund, its Master Fund's) use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[3] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants, the Future Funds, the Adviser, or any Subadviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Feeder Funds are Non-FOFs that comply with condition 17 below, unless their respective Master Funds invest in other investment companies or companies that rely on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits in section 12(d)(1)(A) of the Act.

[5] Applicants do not request 12(d)(1) Relief for any FOF.

efficiencies for shareholders of all feeders of the Master Fund that could not otherwise be realized.[6] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will be at least $20. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the Corporation (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant'').

7. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day [8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [10] or (c) TBA Transactions,[11] short positions and other positions that cannot be transferred in kind [12] will be excluded from the Creation Basket.[13] If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

8. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are not eligible for transfer through either the NSCC enhanced clearing process or DTC manual clearing process; or (ii) in the case of Funds holding securities traded on global markets (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

9. Each Business Day, before the open of trading on a national securities exchange as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are primarily listed (the ''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Listing Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

10. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[15] With respect to Feeder Funds, the Transaction Fee would be paid by purchasers and redeemers of Creation Units directly to the Feeder Fund. Because, however, certain costs covered by the Transaction Fee, such as brokerage costs incurred in connection with the purchase of Deposit

[6] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. In determining whether a Fund will operate in a master-feeder structure, the Board will weigh the potential advantages and disadvantages of such a structure for the Fund. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would invest the portfolio in compliance with the Order.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (as defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

Instruments not deposited by a purchaser in kind, may be borne by the Master Fund rather than the Feeder Fund, the Feeder Fund may pass a portion of the Transaction Fee through to the Master Fund.[16]

11. All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

12. Shares will be listed and traded at negotiated prices on an Exchange and traded in the secondary market. Applicants expect that exchange specialists and market makers (collectively, ''Exchange Specialists'') will be assigned to Shares. The price of Shares trading on an Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on an Exchange will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Authorized Participants also may purchase Creation Units in connection with market making activities.[17] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[18] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

14. Shares will not be individually redeemable and owners of Shares may acquire Shares from a Fund or tender shares for redemption to the Fund in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

15. No Fund will be marketed or otherwise held out as a mutual fund. All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable shares and owners of Shares may acquire Shares from a Fund, or tender those Shares for redemption to a Fund in Creation Units only.

16. Each Fund's Web site, accessible to all investors at no charge, will publish the current version of the Prospectus and other information about the Fund that is updated on a daily basis, including, on a per Share basis for the Fund, daily trading volume, the prior Business Day's NAV and the market closing price or midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of either the market closing price to the NAV or the Bid/Ask Price to the NAV. On each Business Day, before commencement of trading in Shares on the Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund,[19] that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[20]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order to permit the Corporation to register as an open-end management investment company and the Funds to redeem Shares in Creation Units only.[21] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market

[16] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 5,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 5,000 or more shares.

[17] Applicants note that Nasdaq's listing requirements require at least two market makers to be registered in Shares in order to maintain the Nasdaq listing. Applicants also note that market makers on Nasdaq and NYSE Arca must make a continuous, two-sided market at all times or risk regulatory sanctions. Applicants believe that the competition on Nasdaq and NYSE Arca among market makers, many of whom may be Authorized Participants, engaging in arbitrage activities would result in a highly efficient and effective market for Shares.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[19] Feeder Funds will disclose the portfolio of their Master Fund.

[20] Applicants note that under accounting procedures followed by the Funds (and the Master Funds), trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[21] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will operate as traditional mutual funds and issue individually redeemable securities.

price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares would not cause dilution of an investment in Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between NAV and the market price of Shares remains immaterial.

Sections 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of the Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which Global Funds may invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction, up to a maximum of 14 calendar days, in the principal local markets where transactions in the Redemption Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Global Fund (and in the case of a Feeder Fund, the Master Funds),[22] to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 14 calendar days. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

[22] Other feeder funds invested in any Master Fund are not seeking, and will not rely on, the section 22(e) relief requested herein.

9. With respect to Feeder Funds, only in-kind redemptions may proceed on a delayed basis pursuant to the relief requested from section 22(e). In the event of such an in-kind redemption, the Feeder Fund would make a corresponding redemption from the Master Fund. Applicants do not believe the master-feeder structure would have any impact on the delivery cycle.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Acquiring Funds to acquire Shares beyond the limits of section 12(d)(l)(A) of the Act and to permit the Non-FOFs, their principal underwriters and any Broker to sell Shares to an Acquiring Fund beyond the limits of section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1) which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Acquiring Management Company (''Acquiring Fund Adviser''), sponsor of an Acquiring Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Acquiring Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Adviser, the Sponsor, or any person controlling, controlled by,

or under common control with the Acquiring Fund Adviser or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Acquiring Management Company (''Acquiring Fund Subadviser''), any person controlling, controlled by, or under common control with the Acquiring Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadviser or any person controlling, controlled by or under common control with the Acquiring Fund Subadviser (''Acquiring Fund's Subadvisory Group'').

13. Applicants propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate [23] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Non-FOF to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, or employee is an affiliated person (except any person whose relationship to the Non-FOF is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees (''Board'') of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract(s) are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Non-FOF (or in the case of a Feeder Fund, the Master Fund) in which the Acquiring Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[24]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Non-FOF (and in the case of a Feeder Fund, the Master Fund) will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Non-FOF acquires such securities in compliance with Section 12(d)(1)(E) of the Act or this order or the Non-FOF (or in the case of a Feeder Fund, the Master Fund) (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the Act) or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting the Non-FOF (or in the case of a Feeder Fund, the Master Fund) to (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

16. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Fund must enter into an agreement with the respective Non-FOF (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgment from the Acquiring Fund that it may rely on the order only to invest in a Non-FOF and not in any other investment company.

17. Applicants also are seeking the Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind with their Master Funds. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an ''Affiliated Fund'').

19. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one

[23] An ''Acquiring Fund Affiliate'' is any Acquiring Fund Adviser, Acquiring Fund Subadviser(s), Sponsor, promoter or principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is an investment adviser, promoter or principal underwriter of a Non-FOF (or in the case of a Feeder Fund, the Master Fund) and any person controlling, controlled by or under common control with any of these entities.

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the Shares of one or more Affiliated Funds.[25] Applicants also request an exemption in order to permit a Non-FOF to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, an Acquiring Fund which the Non-FOF is an affiliated person or a second tier affiliate.[26]

20. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Except in certain circumstances described above, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers, respectively, and will correspond pro rata to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Non-FOF will be based on the NAV of the Non-FOF.[27] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

22. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transactions would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned and that the transactions are consistent with the general purposes of the Act.

Applicants' Conditions

ETF Relief

Applicants agree that any order of the Commission granting the requested ETF Relief will be subject to the following conditions:

1. As long as a Fund operates in reliance on the requested order, its Shares will be listed on an Exchange.

2. Neither the Corporation nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price of the Shares, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Listing Exchange, the Fund (or in the case of a Feeder Fund, the Master Fund) will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or Subadviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested ETF Relief, other than the Feeder Relief, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

12(d)(1) Relief

Applicants agree that any order of the Commission granting the requested 12(d)(1) Relief will be subject to the following conditions:

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Non-FOF (or in the case of a Feeder Fund, the Master Fund) within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Subadvisory Group will not control (individually or in the aggregate) a Non-FOF (or in the case of a Feeder Fund, the Master Fund) within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of the Non-FOF, the Acquiring Fund's Advisory Group or the Acquiring Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Non-FOF, it will vote its Shares of the Non-FOF in the same proportion as the vote of all other holders of such Shares. This condition does not apply to the Acquiring Fund's Subadvisory Group with respect to a Non-FOF (or in the case of a Feeder Fund, the Master Fund) for which the Acquiring Fund Subadviser or a person controlling, controlled by or under common control with the Acquiring Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring

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[25] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Acquiring Fund because the Adviser provides investment advisory services to that Acquiring Fund.

[26] Applicants state that although they believe that an Acquiring Fund generally will purchase Shares in the secondary market, an Acquiring Fund might seek to transact in Creation Units directly with a Non-FOF.

[27] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Non-FOF, or an affiliated person of such person, for the sale by the Non-FOF of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Fund in a Non-FOF to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Non-FOF (or in the case of a Feeder Fund, the Master Fund) or a Fund Affiliate.

9. The board of directors or trustees of an Acquiring Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and any Acquiring Fund Subadviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Non-FOF (or in the case of a Feeder Fund, the Master Fund) or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of directors (''Board'') of a Non-FOF (or in the case of a Feeder Fund, the Master Fund), including a majority of the independent directors or trustees, will determine that any consideration paid by the Non-FOF (or in the case of a Feeder Fund, the Master Fund) to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Non-FOF (or in the case of a Feeder Fund, the Master Fund); (b) is within the range of consideration that the Non-FOF (or in the case of a Feeder Fund, the Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Non-FOF (or in the case of a Feeder Fund, the Master Fund) and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Non-FOF (or in the case of a Feeder Fund, the Master Fund)) will cause a Non-FOF (or in the case of a Feeder Fund, the Master Fund) to purchase a security in any Affiliated Underwriting.

12. The Board of a Non-FOF (or in the case of a Feeder Fund, the Master Fund), including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Non-FOF (or in the case of a Feeder Fund, the Master Fund) in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Non-FOF exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Non-FOF. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Non-FOF (or in the case of a Feeder Fund, the Master Fund); (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Non-FOF (or in the case of a Feeder Fund, the Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

13. Each Non-FOF (or in the case of a Feeder Fund, the Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Non-FOF exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

14. Before investing in a Non-FOF in excess of the limits in section 12(d)(1)(A), an Acquiring Fund and the Non-FOF will execute an Acquiring Fund Agreement stating that their boards of directors or trustees and their investment adviser(s), or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Non-FOF of the investment. At such time, the Acquiring Fund will also transmit to the Non-FOF a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Non-FOF of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Non-FOF and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from a Non-FOF (or in the case of a Feeder Fund, the Master Fund) by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee or Sponsor, or its affiliated person by the Non-FOF (or in the case of a Feeder Fund, the Master Fund), in connection with the investment by the Acquiring Fund in the Non-FOF. Any Acquiring Fund Subadviser will waive fees otherwise payable to the Acquiring Fund Subadviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Non-FOF (or in the case of a Feeder Fund, the Master Fund) by the Acquiring Fund Subadviser, or an affiliated person of the Acquiring Fund Subadviser, other than any advisory fees paid to the Acquiring Fund Subadviser or its affiliated person by the Non-FOF (or in the case of a Feeder Fund, the Master Fund), in connection with any investment by the Acquiring Management Company in the Non-FOF made at the direction of the Acquiring Fund Subadviser. In the event that the Acquiring Fund Subadviser waives fees, the benefit of

the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Non-FOF (or in the case of a Feeder Fund, the Master Fund) will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Non-FOF acquires such securities in compliance with section 12(d)(1)(E) of the Act or the Feeder Relief in this order; or the Non-FOF (or in the case of a Feeder Fund, the Master Fund) (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act), or (b) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such Non-FOF (or in the case of a Feeder Fund, the Master Fund) to (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Non-FOF (or in the case of a Feeder Fund, the Master Fund) in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30054 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30295; 812–14013]

ING Investments, LLC, et al.; Notice of Application

December 6, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end investment companies in the same group of investment companies to enter into a special servicing agreement (''Special Servicing Agreement'').

APPLICANTS: ING Investments, LLC (''IIL''), Directed Services LLC (''DSL'') and ING Investment Management Co. LLC (''IIM'') (each, an ''Adviser,'' and collectively, the ''Advisers'') and ING Balanced Portfolio, Inc., ING Equity Trust, ING Funds Trust, ING Intermediate Bond Portfolio, ING Investors Trust, ING Mayflower Trust, ING Money Market Portfolio, ING Mutual Funds, ING Partners, Inc., ING Separate Portfolios Trust, ING Series Fund, Inc., ING Strategic Allocation Portfolios, Inc., ING Variable Funds, ING Variable Portfolios, Inc., ING Variable Insurance Trust and ING Variable Products Trust (collectively, the ''Registrants'') and the series thereof (the Registrants and their series, collectively with the Advisers, the ''Applicants.'').[1]

FILING DATES: The application was filed on March 9, 2012, and amended on June 18, 2012, and October 26, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 31, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, Huey P. Falgout, Jr., Chief Counsel, ING Funds, 7337 East Doubletree Ranch Road, Suite 100, Scottsdale, Arizona 85255.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Advisers are investment advisers registered under the Investment Advisers Act of 1940 and serve as investment advisers to the Funds. Each Adviser is a direct or indirect subsidiary of ING Groep, N.V.

2. Each Registrant is registered under the Act as an open-end management investment company. Certain of the Funds, as defined below, currently serve, and others in the future may serve, in ''fund-of-funds'' arrangements whereby a Fund (each, a ''Top-Tier Fund,'' and collectively, the ''Top-Tier Funds'') invests their assets in other Funds (''Underlying Funds'').[2]

3. Applicants request that the order also apply to each existing or future registered open-end management investment company or series thereof that is part of the same ''group of investment companies'' as the Registrants under Section 12(d)(1)(G)(ii) of the Act, and is advised or sub-advised now or in the future by an Adviser or any entity controlling, controlled by, or under common control with an Adviser (such entity included in the term ''Adviser'' and such investment companies or series thereof, collectively with the Registrants and their series, the ''Funds'').

4. Applicants propose that the Funds enter into a Special Servicing

[1] All entities that currently intend to rely on the order have been named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] The Top-Tier Funds will not be Underlying Funds. Exhibit A to the application identifies the current Top-Tier Funds and Underlying Funds.

Agreement that would allow an Underlying Fund to bear the expenses of a Top-Tier Fund (other than investment management fees, rule 12b–1 fees and class-specific administrative service fees). Under the Special Servicing Agreement, each Underlying Fund will bear expenses of a Top-Tier Fund in proportion to the estimated benefits to the Underlying Fund arising from the investment in the Underlying Fund by the Top-Tier Fund (''Underlying Fund Benefits'').

5. Applicants state that the Underlying Fund Benefits are expected to result primarily from the incremental increase in assets resulting from investments in the Underlying Funds by the Top-Tier Funds and the large size of a Top-Tier Fund's holdings of shares in a shareholder account relative to the average size of the share balances held in other Underlying Fund shareholder accounts. A Top-Tier Fund's shareholder account will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts. As a result, the shareholder servicing costs to any Underlying Fund for servicing one account registered to a Top-Tier Fund will be significantly less than the cost to that same Underlying Fund of servicing the same pool of assets contributed by a large group of shareholders owning relatively small accounts in one or more Underlying Funds. In addition, by reducing Top-Tier Fund expenses, the Special Servicing Agreement may lead to increased assets being invested in the Top-Tier Funds, which in turn would lead to increased assets being invested in the Underlying Funds. Further, increased assets could enable the Underlying Funds to control and reduce their expense ratios because their operating expenses will be spread over a larger asset base.

6. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the expenses incurred by a Top-Tier Fund that may be reimbursed by an Underlying Fund (''Underlying Fund Payments''); (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense, the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's board of trustees (''Board''), including a majority of trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Directors/Trustees''), as being in the best interests of any Fund and its shareholders and not involving overreaching on the part of any person concerned.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act provide that an affiliated person of, or a principal underwriter for, a registered investment company, or an affiliate of such person or principal underwriter, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. Each Adviser, as investment adviser, is an affiliated person of each of the Underlying Funds and Top-Tier Funds, which in turn could be deemed to be under common control of the Advisers and therefore affiliated persons of each other. The Top-Tier Funds and the Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund's ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and Advisers.

2. Rule 17d–1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit the proposed expense sharing arrangements. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and Advisers in the proposed expense sharing arrangements is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant will participate on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket expenses and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense, the Top-Tier Funds' investment in the Underlying Fund will be excluded); and (e) has been approved by the Funds' Board, including a majority of the Independent Directors/Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund's entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by

the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that the Advisers, any affiliated person of the Advisers, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Directors/Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and Advisers will furnish, such information as may reasonably be necessary to evaluate the terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Directors/Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were based, for the duration of the Special Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30050 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68382; File No. SR–NYSEARCA–2012–136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing And Immediate Effectiveness of Proposed Rule Change to Allow for the Split-Price Priority Provisions to Apply to Open Outcry Trading of Cabinet Trades

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 30, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.80 to allow for the split-price priority provisions to apply to open outcry trading of cabinet trades. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.80 to provide that the split-price priority provisions in Rule 6.75(h) apply to accommodation trades (''cabinet trades'') in open outcry.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 6.75(h). Rule 6.75(h) regarding priority on split-price transaction occurring in open outcry specifically provides the following: (1) If an OTP Holder or OTP Firm purchases (sells) one or more option contracts of a particular series at a particular price or prices, the OTP Holder or OTP Firm must, at the next lower (higher) price at which another OTP Holder or OTP Firm bids (offers), have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that the OTP Holder or OTP Firm purchased (sold) at the higher (lower) price or prices, provided that the OTP Holder or OTP Firm's bid (offer) is made promptly and continuously and that the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). This paragraph only applies to transactions effected in open outcry; (2) If an OTP Holder or OTP Firm purchases (sells) fifty or more option contracts of a particular series at a particular price or prices, he/she shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he/she purchased (sold) at the higher (lower) price or prices, but only if his/her bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of the transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange may increase the ''minimum qualifying order size'' above 100 contracts for all products. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange Bulletin. This paragraph only applies to transactions effected in open outcry; (3) If the bids or offers of two or more OTP Holders or OTP Firms are both entitled to priority in accordance with subsections (1) or (2), it shall be afforded them, insofar as practicable, on an equal basis; (4) Except for the provisions set forth in Rule 6.75(h)(2), the priority afforded by this rule is effective only insofar as it does not conflict with customer limit orders represented in the Consolidated Book. Such orders have precedence over OTP Holders' or OTP Firms' orders at a particular price; customer limit orders in the Consolidated Book also have precedence over OTP Holders' or OTP Firms' orders that are not superior in price by at least the MPV; and (5) Floor Brokers are able to achieve split price priority in accordance with paragraphs (1) and (2) above.

Example: Market quote is $1.00–1.20, with customer interest in the book at the offer price. Floor Broker announces a market order to buy 100 contracts. Market Maker A (''MM–A'') is alone in responding ''Sell 50 at $1.15 and 50 at $1.20'' (for an equivalent net price of $1.175).

Because MM–A is willing to sell contracts at the lower price of $1.15, MM–A then has priority over

Continued

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading provides a way for market participants to effect transactions in such options at a minimal cost. Cabinet trading is conducted in accordance with Rule 6.80 Accommodation Transactions (Cabinet Trades),[4] which provides that cabinet trading shall be conducted in accordance with other Exchange rules, except as otherwise provided in Rule 6.80, and sets forth specific procedures for engaging in cabinet trading. Pursuant to Rule 6.80(a), the Exchange designates options issues as eligible for cabinet trading pursuant to Rule 6.80. Such designations are made pursuant to requests from market participants.

Current Rule 6.80 provides for both manual and electronic cabinet trading—with manual cabinet trading pursuant to Rule 6.80(b) and electronic cabinet trading pursuant to Rule 6.80(c). Rule 6.80(b)(3) expressly provides that the split-price priority provisions otherwise applicable to open outcry trading pursuant to Rule 6.75(f) do not apply to open outcry trading in cabinet trades. Because split-price priority provisions are only applicable to open outcry trading, 6.80(c), which governs electronic trading of cabinet trading, does not include this provision.

The Exchange believes that split-price priority provisions should apply to open outcry cabinet trading, and that the existing restriction unnecessarily limits the ability of market participants to manually trade cabinet orders on the floor. The current restriction unnecessarily restricts business by not making available certain prices which are available on other exchanges. Split-price priority in open outcry trading of cabinet trades provides an extra incentive for market participants to both price improve and facilitate the efficient trading of options contracts that are worthless or not actively trading. The Exchange notes that neither CBOE nor PHLX have a similar restriction on cabinet trades, and allow for split-price priority for cabinet trades on the trading floor.[5] In addition, NYSE MKT recently filed for immediate effectiveness a proposed rule change to allow split-price priority for open outcry trading of cabinet trades.[6]

Accordingly, the Exchange therefore proposes to delete the language from Rule 6.80(3) that states that the split-price priority provisions of 6.75(h) shall not apply. The Exchange believes that providing market participants the ability to have split-price priority when trading cabinet orders in open outcry will help facilitate the trading of options positions that are worthless or not actively traded. The Exchange believes that the proposal should lead to more aggressive quoting by trading crowd participants on the floor, which in turn could lead to better executions. A trading crowd participant might be willing to trade at a better price for a portion of an order if they were assured of trading with the balance of the order at the next price increment. As a result, Floor Brokers representing orders in the trading crowd might receive better-priced executions. The Exchange notes that cabinet trades are infrequent in nature and that, even though the Exchange Rules provide that cabinet trades may be traded electronically, the Exchange has not designated any options issues to trade electronically pursuant to Rule 6.80, because market participants have never requested to do so. Thus, the fact that split-price priority is available for manual and not electronic, will have no impact on ongoing electronic cabinet trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that allowing for the split-pricing priority provisions to apply to open outcry trading of cabinet trades will better facilitate the trading of options contracts that are worthless or not actively traded. The proposed change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, by aligning the Exchange's Rules with the rules on other options exchanges that conduct manual cabinet trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

all orders in the Book and trading crowd at the next higher price, in this case 1.20, for an equal number of contracts. The priority afforded by this provision allows MM–A to trade ahead of any like priced customer orders in the Book.

[4] Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

[5] *See* CBOE Rules 6.54 and 6.47; PHLX Rule 1059. CBOE and PHLX both conduct their cabinet trading via open out-cry. Split-price priority is available for open out-cry trading on both CBOE and PHLX, with no restriction for cabinet trades.

[6] *See* Securities Exchange Act Release No. 68128 (November 1, 2012), 77 FR 68186 (November 15, 2012) [sic] (SR–NYSEMKT–2012–55). *See also* NYSE MKT Rule 968NY.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–136 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSEARCA–2012–136. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2012–136 and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30047 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68387; File No. SR–FINRA–2012–053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Establish Optional TRACE Data Delivery Services and Related Fees

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730 to establish certain optional Trade Reporting and Compliance Engine ("TRACE") data delivery services and fees in connection with such optional services.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend Rule 7730 to establish two new optional TRACE data delivery services, TRACE Data Delivery Plus and TRACE Data Delivery Secure File Transfer Protocol ("TRACE Data Delivery SFTP"), and fees in connection with such optional services. Firms will have the option to enroll in neither, one or both of these services.

Background

The FINRA Automated Data Delivery System ("FINRA ADDS") is a secure Web site that provides a firm, by market participant identifier ("MPID"), access to TRACE trade journal files. The TRACE trade journal files in FINRA ADDS are available for Asset-Backed Securities transactions as well as for corporate bonds and Agency Debt Securities ("Corporate/Agency Debt Securities").[3] The Asset-Backed Securities trade journal files are separate from the Corporate/Agency Debt Securities trade journal files.

Currently, to access the transaction information in FINRA ADDS, a firm must have an MPID for trade reporting. Entitled users of the MPID must submit a request for a trade journal file for a specified date, which must be within 30 calendar days prior to the date of the request. A "report" is provided in response to the firm's request.

FINRA ADDS generates a separate report for each data archive (Asset-Backed Securities or Corporate/Agency Debt Securities) requested as well as a separate report for each date requested. Thus, a single report is a trade journal file for one date listing all transactions to which the requesting MPID was a party that were reported on that date

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Transactions in Asset-Backed Securities began to be reported to TRACE on May 16, 2011, and TRACE trade journal files on FINRA ADDS are available from that date. *See Regulatory Notice* 11–20 (May 2011). Transactions in Corporate/Agency Debt Securities became available on FINRA ADDS as a result of the migration of the reporting of such securities and related data functions from legacy TRACE technology to the Multi-Product Platform ("MPP"), which occurred on February 6, 2012. *See Regulatory Notice* 11–53 (November 2011). Accordingly, the FINRA ADDS trade journal files for Corporate/Agency Debt Securities transactions are available only for transactions that are reported on or after February 6, 2012. Corporate/Agency Debt Securities transactions reported prior to February 6, 2012 are not available on FINRA ADDS.

either in Asset-Backed Securities or Corporate/Agency Debt Securities.[4]

The FINRA ADDS service is free, and there are no limits on the number of requests for reports that a firm may make or the number of firm personnel associated with a specified MPID that may submit such requests. The FINRA ADDS reports can be used by firms to assist in monitoring their trading and reporting activity and in performing other business activities, such as compliance.

Proposed Optional Data Services and Proposed Fees

Since FINRA ADDS was initiated in July 2011, FINRA has received feedback from firms requesting access to more of the firm's TRACE transaction history and increased flexibility to access such data. In response, FINRA is proposing to establish two additional, optional data delivery services, TRACE Data Delivery Plus and TRACE Data Delivery SFTP, and proposed fees in connection with such optional services.

TRACE Data Delivery Plus. TRACE Data Delivery Plus provides greater access to TRACE trade journal files. With TRACE Data Delivery Plus, an MPID subscriber will be able to obtain reports for Asset-Backed Securities or Corporate/Agency Debt Securities transaction data for transactions to which the MPID was a party that were reported more than 30 calendar days prior to the date of the MPID's request (*i.e.,* transaction data in trade journal files no longer available through the free FINRA ADDS service).[5] For example, if on September 21, 2012, a subscriber requests its transaction activity in Asset-Backed Securities and Corporate/Agency Debt Securities reported on June 21, 2012 and June 22, 2012, the subscriber will receive four reports—one from the Asset-Backed Securities trade journal files for transactions reported on June 21, 2012, a second report for such transactions reported on June 22, 2012, and two additional reports from the Corporate/Agency Debt Securities trade journal files for the respective dates. Moreover, the subscriber will be able to download the requested report(s) on demand.

Subscribers to TRACE Data Delivery Plus also will have the option to obtain automated daily delivery of the subscriber's TRACE trade journal files to the FINRA ADDS Web site.[6] Once a subscriber has activated subscription preferences, the files to which the user subscribes will automatically appear on the Web site each morning for download by the user, eliminating the need for the user to submit file requests. The automated daily delivery of the subscriber's TRACE trade journal files to the Web site will not constitute a request for a report for purposes of calculating the monthly fee described below. Accordingly, if a subscriber has no other requests for reports, the monthly fee would fall in the second column of the table below.

To provide TRACE Data Delivery Plus, FINRA proposes to amend Rule 7730 to charge an MPID subscriber a monthly fee. The proposed monthly fee is based on two factors: (1) The average number of transactions per month to which the MPID was a party that was reported to TRACE in the prior calendar year, which number is used to categorize the MPID in one of four tiers;[7] and (2) the number of FINRA ADDS reports received in a given month for transaction data that is no longer available through the free FINRA ADDS service (*i.e.,* transaction data regarding transactions that were reported more than 30 calendar days prior to the date of the request) (''Plus reports'').[8] The proposed monthly fees for Plus reports are:

Tier based on average number of transactions per month MPID subscriber was a party to in prior calendar year	0–5 Plus reports received per month	6–25 Plus reports received per month	>25 Plus reports received per month
Tier 1: 10,000+	$60	$80	$100
Tier 2: 3,000–9,999	40	55	70
Tier 3: 500–2,999	20	30	40
Tier 4: <500	10	15	20

TRACE Data Delivery SFTP. Firms also have requested an automated interface to retrieve (without sending a request or query) their prior day's TRACE trade journal files daily from FINRA ADDS. The new optional TRACE Data Delivery SFTP will provide such a service, permitting an MPID subscriber to retrieve the subscriber's prior day TRACE trade journal files automatically via SFTP.

FINRA proposes to amend Rule 7730 to establish two fees to provide the TRACE Data Delivery SFTP: (1) A one-time set-up fee of $250 per subscriber for TRACE Data Delivery SFTP; and (2) a monthly fee of $200 per subscriber.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and

[4] The FINRA ADDS report provides all of the transaction reports in which the MPID is a party to a transaction (whether the trade was reported by the firm or otherwise reported) on the specified date. The MPID also may request ''reject'' files (*i.e.,* transaction reports submitted by the MPID that were not accepted by the system due to missing or inaccurate information). If a firm uses multiple MPIDs, persons authorized to use the specified MPID must make the data request to FINRA ADDS and the data provided by FINRA ADDS is limited to transactions involving that MPID.

[5] As with the free FINRA ADDS service, firms interested in TRACE Data Delivery Plus must subscribe per MPID. To access transaction information for multiple MPIDs, a firm must obtain a subscription for each MPID.

[6] In contrast, firms using the free FINRA ADDS service must submit a request for data (*e.g.,* if an MPID wants daily delivery of the prior day's Asset-Backed Security trade journal file, the MPID must log in each day and submit a request).

[7] Once assigned to a tier, a subscriber remains in the tier for the remainder of the calendar year. For example, an MPID that subscribes in September 2012 will be assigned to a tier based upon the TRACE transactions reported in 2011 in which the MPID was a party, and will remain in that tier until December 31, 2012. In 2013, the MPID will be re-evaluated and assigned to a tier for 2013 fee purposes, based upon the MPID's trading in TRACE-Eligible Securities in 2012.

[8] A subscriber's monthly fee would be assessed each month and accordingly may vary during a calendar year, depending on the number of reports FINRA sends to the subscriber in response to the subscriber's requests. The TRACE Data Delivery Plus fee is based upon the number of reports provided to avoid charging for data requests that FINRA is unable to provide. For example, FINRA ADDS would be unable to provide a report for a Corporate/Agency Debt Securities trade journal file for a date prior to February 6, 2012, the date such securities were migrated to the MPP.

[9] 15 U.S.C. 78*o*-3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest; and Section 15A(b)(5) of the Act,[10] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed rule change to establish two optional data delivery services subject to appropriate fees would provide a member firm with access to more of its TRACE transaction history and increased flexibility to access such data, which may assist a member firm in monitoring its trading and reporting activity and in performing other business activities. FINRA believes that providing member firms an additional automated avenue to review pricing in and the transaction history of the member firm's TRACE-Eligible Securities transactions may enhance the member firm's oversight of its trading in fixed income securities, which would promote market integrity and provide for the protection of investors and the public generally.

FINRA believes that the proposed rule change provides for the equitable allocation of the proposed reasonable fees among all member firms. The optional services would be accessible by all member firms, subject to reasonable fees. As with fees for other optional data services provided by FINRA, the proposed fees would be charged only to those member firms that voluntarily opt to receive one or both of the services. Only those member firms that elect to become subscribers and use the optional services would incur the costs related to such services. The fees proposed for TRACE Data Delivery Plus are equitably allocated among those member firms that opt to subscribe in that the fees are scaled according to both the average number of transactions in TRACE-Eligible Securities per month per MPID and the number of requested reports, such that higher volume users would be subject to higher fees. Similarly, the fees proposed for TRACE Data Delivery SFTP are equitably allocated among MPID subscribers in that the same setup fees are charged to every member firm that elects to establish a secure and automated interface with the subscriber, and the same monthly fee is charged to all subscribers because each subscriber receives the same service—an automated daily transmission of the subscriber's prior day TRACE trade journal files.

[10] 15 U.S.C. 78*o*-3(b)(5).

FINRA believes that the proposed fees are reasonable in light of the costs and benefits provided by the corresponding services. In creating such services, FINRA incurred costs related to data warehousing, software and hardware upgrades and software programming, as well as costs related to personnel to support and maintain such services. The proposed fees are reasonable in that such fees are designed to defray a portion of expenses incurred to establish, operate, and administer the two optional services. The proposed fees for TRACE Data Delivery Plus are reasonable as the fees would be scaled according to both the average number of transactions in TRACE-Eligible Securities per month per MPID and the number of requested reports. In general, the fees are scaled such that those MPID subscribers having fewer transactions per month and making fewer requests for reports per month would have lower monthly fees while those subscribers reporting larger numbers of transactions per month and making many requests for reports would have higher monthly fees. The proposed one-time fee for TRACE Data Delivery SFTP would permit FINRA to offset the expense of establishing a secure and automated interface with the subscriber. Moreover, the monthly TRACE Data Delivery SFTP fee is reasonable, because it would provide an MPID subscriber the benefit of automating its daily request for, and receipt of, the TRACE trading data from the prior trade date, and likely reduce the costs of an MPID subscriber that otherwise would make a daily request for such data, and also would offset, in part, FINRA's expenses relating to maintaining the automated daily transmission of TRACE data to subscribers and the secure and automated interface with all subscribers to the service.

FINRA believes that the services and the proposed fees are not unfairly discriminatory because, in addition to the services being voluntary, they would be available to all member firms on an equal basis. The same range of services would be available to all members and the proposed fees would be applicable to all interested members. Thus, the proposed rule change would not unfairly discriminate between or among similarly situated members as to the optional services or the applicable fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As further detailed above, FINRA is proposing to establish two optional data delivery services subject to reasonable fees. Members that do not elect to receive such data using the optional data delivery services will continue to have the ability to access such data upon request at no charge. While such members can continue to request such data for a specified date, which must be within 30 calendar days prior to the date of the request, FINRA does not believe that this alternative imposes a significant operational burden on firms seeking access to TRACE trade journal files at no charge.

In addition, because the fees that will be charged for the two optional data delivery services are both optional and reasonable in amount, FINRA does not believe that the payment of such fees by any member, or any group or class of members, will result in a burden on competition to such industry members relative to other industry members that elect not to subscribe to the optional services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File

Number SR–FINRA–2012–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2012–053, and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30106 Filed 12–12–12; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68384; File No. SR–ISE–2012–94]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Payment for Order Flow Fees

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its payment for order flow fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has a payment for order flow (''PFOF'') program that helps its market makers establish PFOF arrangements with an Electronic Access Member (''EAM'') in exchange for that EAM routing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each Priority Customer contract they execute in the symbols that are subject to the PFOF fee.[3] Specifically, ISE currently charges a PFOF fee of $0.65 per contract for options classes that are not in the penny pilot program. For penny pilot classes that are not subject to the Exchange's maker/taker fees, the Exchange currently charges a PFOF fee of $0.25 per contract.

The Exchange now proposes to increase the PFOF fee applicable to classes that are not in the penny pilot program from $0.65 per contract to $0.70 per contract. The Exchange is not proposing any change to the PFOF fee charged to penny pilot classes that are not subject to the Exchange's maker/taker fees. With this proposed rule change, ISE's PFOF fee in classes that are not in the penny pilot program will be more competitive with the PFOF fee charged by at least one other options exchange in these options classes.[4] This proposed rule change will also allow ISE market makers to compete better for order flow in these options classes.

As noted above, the PFOF fee is collected by the Exchange for each Priority Customer contract executed in the symbols where PFOF fees are collected. For the sake of clarity, the Exchange proposes to add rule text to its Schedule of Fees to note that the PFOF fee applies to market makers for each Priority Customer contract executed. Aside from adding the proposed clarifying text to its Schedule of Fees, the Exchange is not amending its PFOF program in any other respect.

The Exchange has designated this proposal to be operative on December 3, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (''Act''),[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PFOF fees do not apply to market makers for each Regular Priority Customer contract executed in Select Symbols. PFOF fees are waived for Singly Listed Symbols, FX Options, Flash Orders and for Complex Orders in all symbols. *See* Schedule of Fees, Section IV, D.

[4] NASDAQ OMX PHLX LLC (''PHLX'') currently charges a payment for order flow fee of $0.70 per contract for options classes that are not in the penny pilot program. *See* PHLX Pricing Schedule, Section II, Payment for Order Flow Fees.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The proposed rule change will allow the Exchange and its market makers to better compete for order flow since the Exchange will now collect the same amount of fee as PHLX in options classes that are subject to the PFOF fee. The Exchange believes that with this proposed rule change, market makers will have greater incentive to trade on ISE in the symbols that are subject to the PFOF fee and thus enhance competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–94 and should be submitted by January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30104 Filed 12–12–12; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68386; File No. SR–FINRA–2009–060]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment Nos. 1 and 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books)

December 7, 2012.

I. Introduction

On September 10, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder [2] to amend FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books). The proposed rule change was published for comment in the **Federal Register** on October 22, 2009.[3] The Commission received seven comment letters on the proposed rule change.[4] On December 22, 2009, FINRA filed a letter with the Commission responding to these comments,[5] and on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 60836 (Oct. 16, 2009), 74 FR 54614 (Oct. 22, 2009) (Notice of Filing of Proposed Rule Change; File No. SR–FINRA–2009–060) (''Notice'').

[4] *See* letters from BTUD, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (the ''BTUD Letter''); Frederick T. Greene, CIMA, Senior V.P., Portfolio Manager, Woodforest Financial Services, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated October 29, 2009 (the ''Woodforest Letter''); Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, to Elizabeth Murphy, Secretary, SEC, dated October 29, 2009 (the ''NPB Letter''); Dale E. Brown, CAE, President & CEO, Financial Services Institute, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 4, 2009 (the ''FSI Letter''); Bari Havlik, Chief Compliance Officer, Charles Schwab & Co., Inc., to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2009 (the ''Schwab Letter''); Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2009 (the ''Wells Fargo Letter''); and Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated December 16, 2009 (the ''SIFMA Letter''). These letters are available on the SEC's Web site at *http://www.sec.gov/comments/sr-finra-2009–060/finra2009060.shtml.*

[5] *See* letter from Stan Macel, Assistant General Counsel, Regulatory Policy and Oversight, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated

Continued

December 21, 2011, FINRA filed Amendment No. 1 with the Commission to further respond to the comments and to propose amendments in response thereto.[6] On December 5, 2012, FINRA filed Amendment No. 2 with the Commission to modify a phrase that was included in Amendment No. 1.[7] The Commission is publishing this notice and order to solicit comments on Amendment Nos. 1 and 2 and to approve the proposed rule change, as modified by Amendment Nos.1 and 2, on an accelerated basis.

II. Description of the Proposal

FINRA has proposed to amend FINRA Rule 8210, which confers on FINRA staff the authority to compel a member, person associated with a member, or other person over whom FINRA has jurisdiction, to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding. The proposed rule change would clarify the scope of FINRA's authority under the rule to inspect and copy the books, records, and accounts of such member or person, specify the method of service for certain unregistered persons under the rule, and authorize service on attorneys who are representing clients.

FINRA Rule 8210 applies to all members, associated persons, and other persons over whom FINRA has jurisdiction, including former associated persons subject to FINRA's jurisdiction as described in the FINRA By-Laws.[8] FINRA Rule 8210(c) provides that a member's or associated person's failure to provide information or testimony or to permit an inspection and copying of books, records, or accounts is a violation of the rule.

Information in a Member's or Person's Possession, Custody or Control

FINRA Rule 8210(a)(2) currently provides that FINRA staff shall have the right to inspect and copy the books, records, and accounts of all applicable members and persons with respect to any matter involved in an investigation, complaint, examination or proceeding.[9] The proposed rule change would clarify that the information that FINRA staff shall have the right to inspect and copy must be in the member's or person's ''possession, custody or control.'' [10] This language parallels the Federal Rules of Civil Procedure regarding document requests and subpoenas for documents.[11]

Notice to Associated But Unregistered Persons

FINRA Rule 8210 addresses the legal concept of service of a written request by using the term ''notice'' of a request. Currently, FINRA Rule 8210(d) states that, with respect to members and associated persons, notice shall be deemed received by the member or associated person when a copy of the notice is mailed or otherwise transmitted to the last known relevant address of the member or associated person as reflected in the Central Registration Depository (''CRD''). The CRD system contains information concerning registered members and persons,[12] but in most instances it does not contain information concerning unregistered persons who are or were associated with a member.[13]

Although not routine, some investigations require FINRA examiners or investigators to request information from persons currently or formerly associated with a member in an unregistered capacity.[14] The current rule is unclear as to what would constitute proper notice on such persons for whom information is not available in CRD. The proposed rule change would explicitly address the methods by which notice would be deemed received by persons currently or formerly associated with a member in an unregistered capacity.

With respect to unregistered persons currently associated with a member, the proposed rule change would provide that notice shall be deemed received by mailing or otherwise transmitting the notice to the last known business address of the member as reflected in CRD. In addition, the proposed rule change would retain the provision that if FINRA staff responsible for transmitting the notice has actual knowledge that the member's address provided through CRD is out of date or inaccurate, then a copy of the notice must be transmitted to both the address provided through CRD, as well as any more current address known to FINRA staff.

With respect to unregistered persons formerly associated with a member, the proposed rule change would provide that notice shall be deemed received upon personal service, which is defined as set forth in FINRA Rule 9134(a)(1).[15] FINRA Rule 9134(a)(1) is based on traditional concepts for serving a summons under Rule 4 of the Federal Rules of Civil Procedure.

December 22, 2009 (''Response to Comments''). This letter is available on the SEC's Web site at *http://www.sec.gov/comments/sr-finra-2009–060/finra2009060.shtml.*

6 *See* Amendment No. 1 dated December 21, 2011 (''Amendment No. 1''). Amendment No. 1 is described below in Section III.B., and the text of Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

7 *See* Amendment No. 2 dated December 5, 2012 (''Amendment No. 2''). Amendment No. 2 is described below in Section III.B., and the text of Amendment No. 2 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

8 *See* FINRA By-Laws, Article V, Section 4(a) (Retention of Jurisdiction).

9 FINRA Rule 8210(a) provides FINRA adjudicators with the same rights as FINRA staff to request information. Although the proposed rule change would also clarify a FINRA adjudicator's authority, no commenters expressed any concerns that specifically addressed the powers of FINRA adjudicators.

10 When filing the proposed rule change with the Commission, FINRA indicated that in using the word ''control,'' in addition to possession and custody, it intended to require members or persons covered by the rule to provide, for example, records that they have the legal right, authority, or ability to obtain upon demand. *See Camden Iron & Metal* v. *Marubeni Am. Corp.,* 138 F.R.D. 438, 441 (D.N.J. 1991) (''Federal courts construe 'control' very broadly under [Federal] Rule [of Civil Procedure] 34.''). Moreover, FINRA indicated that the proposed addition of ''possession, custody or control'' to Rule 8210(a)(2) would address questions that have arisen in litigation regarding the scope of the rule. *See, e.g., In re: Jay Alan Ochanpaugh,* Exchange Act Release No. 54363 (Aug. 25, 2006) (referred to hereafter as the ''*Jay Alan Ochanpaugh''* decision or litigation).

11 *See* Fed. R. Civ. P. 34.

12 Members and registered persons have an affirmative duty to update CRD with their current address for at least two years after they have had their registration terminated. *See Notice to Members* 99–77 (noting that FINRA requests for information and disciplinary complaints issued during the period of FINRA's retained jurisdiction will be mailed to a person's last address in FINRA's records).

13 In some limited instances, CRD may contain information concerning unregistered associated persons who were required to submit information, including fingerprint information, to CRD in connection with their employment.

14 Persons associated with a member who are unregistered may include persons exempt from registration, *e.g.,* those whose functions are solely and exclusively clerical or ministerial; those whose functions are related solely and exclusively to the member's need for nominal corporate officers or for capital participation; and those whose functions are related solely and exclusively to transactions in municipal securities, transactions in commodities, or transactions in security futures (provided they are registered with a registered futures association). *See, e.g.,* NASD Rule 1060(a). For purposes of FINRA Rule 8210, unregistered persons associated with a member may also include direct owners and executive officers listed in Schedule A of Form BD of a member whose job functions do not otherwise require them to register with FINRA. *See* FINRA By-Laws, Article I(rr) (definition of ''person associated with a member'').

15 FINRA Rule 9134(a)(1) provides as follows: ''Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein[.]''

Notice to Members and Persons Represented By Counsel

The proposed rule change would amend FINRA Rule 8210(d) to explicitly address issues of service on members or persons that are known to be represented by counsel. Currently, the rule does not explicitly permit FINRA staff to serve notice on a member's or person's counsel in situations in which FINRA staff knows that the member or person is represented by counsel regarding the matter in question. The proposed rule change would allow FINRA staff to recognize that counsel can act as an authorized agent on behalf of a member or person. It would provide that, if FINRA staff knows that a member or person is represented by counsel regarding the matter in question, then notice shall be provided to counsel rather than to the member or person. The proposed rule change would harmonize FINRA's rule in this regard with Codes of Professional Conduct in many states regarding service on counsel.[16]

Effective Date

In its filing with the Commission, FINRA stated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Summary of Comments, FINRA's Response, and Amendment Nos. 1 and 2

As stated above, the Commission received seven comment letters in response to the proposed rule change.[17] Three commenters supported the amendments as proposed[18] and four commenters expressed various concerns with different aspects of the proposal.[19] On December 22, 2009, FINRA filed a letter with the Commission responding to these comments,[20] and on December 21, 2011, FINRA filed Amendment No. 1 with the Commission to further respond to the comments and to propose amendments in response thereto.[21] On December 5, 2012, FINRA filed Amendment No. 2 with the Commission to modify a phrase that was included in Amendment No. 1.[22]

A. Summary of, and FINRA's Responses to, Comment Letters

1. Information in a Member's or Person's Possession, Custody or Control

Four commenters addressed FINRA's proposal to amend FINRA Rule 8210(a)(2).[23] FINRA Rule 8210(a)(2) currently provides that FINRA staff shall have the right to inspect and copy the books, records and accounts of all applicable members and persons "with respect to any matter involved in the investigation, complaint, examination or proceeding." The proposed rule change would clarify that the information subject to FINRA inspection and copying must be in the member's or person's "possession, custody or control."

Three commenters expressed concern that FINRA's intent to clarify the scope of its authority regarding requests pursuant to FINRA Rule 8210 represented an expansion of the current rule without a meaningful discussion or consideration of the possible legal and practical implications and consequences for member firms, associated persons, and persons over whom FINRA has jurisdiction.[24] These commenters were particularly concerned that FINRA would be able to compel its members and persons over whom it has jurisdiction to provide FINRA with information within the member's or person's "control." In its filing of the proposed rule change, FINRA stated that it intended for the word "control," in addition to possession and custody, to require members or persons covered by the rule to provide, for example, records that they have the legal right, authority, or ability to obtain upon demand.[25] In support of their comments, two commenters cited to the Commission's *Jay Alan Ochanpaugh* decision, in which the Commission considered the authority of the NASD (now FINRA) under Rule 8210 in a litigation context and stated that a "fuller exploration" of the scope of Rule 8210 would be required by the NASD to support its view in the case that the rule authorized it to obtain information within a member's or person's possession or control.[26]

In its Response to Comments, FINRA stated that commenters were incorrect in their analysis of the *Jay Alan Ochanpaugh* litigation.[27] FINRA noted that although the Commission's decision in that case addressed both the legal argument that Rule 8210 did not include the concept of "possession and control" and the factual argument that the NASD failed to prove that the applicant had possession and control of the documents, the Commission's decision to set aside FINRA's action in the case was based on factual grounds.[28] FINRA also noted that the Exchange Act, not the decision in *Jay Alan Ochanpaugh,* provides the standard the Commission uses when analyzing a self-regulatory organization's proposed rule change.[29] FINRA further argued that the purpose of proposed FINRA Rule 8210 is to facilitate investigations and that the consequences or burdens of any particular request are factually specific to that investigation.[30]

2. Issues Regarding Access to Third-Party Documents and Procedural Protections

Three commenters raised concerns that the proposed rule change could permit FINRA to compel members or associated persons to produce documents that belong to a third party.[31] For example, two commenters expressed concern that FINRA would not be required to maintain confidentiality of third party documents it receives pursuant to a Rule 8210 request, which could be made public when attached to pleadings in court filings, when sought by another party pursuant to a subpoena, and when disclosed pursuant to Freedom of Information Act requests.[32] One of these commenters expressed further concern that public disclosure of confidential or proprietary third party documents as a result of the proposed rule change may result in the owner of the documents suffering material harm, which, in turn, could prompt the owner of the records

[16] *See, e.g.,* American Bar Association model Rule of Professional Conduct 4.2 ("ABA Rule 4.2"). ABA Rule 4.2 provides as follows: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Many states have rules regarding communication with a person represented by counsel that are based on ABA Rule 4.2.

[17] *See supra* note 4.

[18] *See* FSI Letter; NPB Letter; and Woodforest Letter.

[19] *See* BTUD Letter; Schwab Letter; SIFMA Letter; and Wells Fargo Letter.

[20] *See* Response to Comments, *supra* note 5.

[21] *See* Amendment No. 1, *supra* note 6.

[22] *See* Amendment No. 2, *supra* note 7.

[23] *See* BTUD Letter; Schwab Letter; SIFMA Letter; and Wells Fargo Letter.

[24] *See* Schwab Letter; SIFMA Letter; and Wells Fargo Letter.

[25] *See* Notice, *supra* note 3.

[26] *See* Schwab Letter and SIFMA Letter.

[27] *See* Response to Comments, *supra* note 5.

[28] *Id.*

[29] *Id. See also* Section 19(b)(2)(C) of the Exchange Act, which states that the Commission shall approve a proposed rule change of a self-regulatory organization "if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization."

[30] *See* Response to Comments, *supra* note 5.

[31] *See* Schwab Letter; SIFMA Letter; and Wells Fargo Letter.

[32] *See* Schwab Letter and SIFMA Letter.

to seek damages or other recourse from FINRA and the member firm for publicly disclosing the information.[33]

To address these concerns, one commenter recommended that FINRA's right to demand possession, custody, or control of third party records should be limited to when an associated person is acting in its capacity as an associated person.[34] This commenter also stated that FINRA should access documents of third parties through subpoenas to provide third parties with a means of addressing their issues against the production of their documents and to help protect member firms against claims of improper disclosure.[35]

One commenter stated that FINRA's proposal does not address issues relating to the ownership of records where FINRA is seeking records of a third party not within FINRA's jurisdiction.[36] For example, according to this commenter, an unrelated third party may own and have absolute control over the material requested, while the person or entity over whom FINRA has jurisdiction may have limited access to the documents or only the right to request the documents from the third party for a specific purpose consistent with their role in the organization or relationship with the third party.[37] The commenter believes that this may result in the member firm breaching contractual obligations owed to the third party and potentially result in a violation of Rule 8210.[38] Another commenter expressed concern that under the proposed rule change, regulators could rely on the subject of an investigation to supply information related to third parties as opposed to independently obtaining those records from the third party.[39]

Two commenters expressed concern about the procedural protections of which FINRA members may avail themselves when in receipt of a Rule 8210 request for information.[40] These commenters stated that, although the rule seeks to adopt the same standard found in the Federal Rules of Civil Procedure, FINRA members may not receive the same procedural protections as those found in federal court, such as the right to object to the production of requested documents.[41] These commenters also stated that if a FINRA member cannot comply with a request under Rule 8210, and the firm is found to have violated the rule, the procedural process to appeal to the SEC and federal courts is long and arduous.[42]

FINRA believes that the concerns described above relating to issues regarding access to third party documents and procedural protections incorrectly assume that FINRA's investigations into the conduct of its members and associated persons are strictly limited in scope to the FINRA members and associated persons under investigation.[43] FINRA stated that although it has jurisdiction to file an action against its members and associated persons (and those otherwise subject to its jurisdiction), its investigations can involve non-FINRA members, including customers, issuers, or foreign businesses.[44] Consequently, FINRA contends that third party documents within the ''possession, custody or control'' of the FINRA member or associated person that relate to the investigation should be produced pursuant to proposed FINRA Rule 8210 and concerns solely based on their status as third party documents should not prevent the Commission from approving the proposed rule change.[45]

FINRA agrees in part that its authority to request documents is contractual. However, FINRA notes that its authority is also based on its rules applying to all members and their associated persons.[46] FINRA states that, in light of these relationships, its investigations are based on a model of implied cooperation as opposed to the adversarial system that is governed by the Federal Rules of Civil Procedure.[47] Specifically, FINRA's members and persons subject to its jurisdiction have already agreed, either explicitly or implicitly, to supply FINRA with information during its investigations.[48] FINRA notes that once an investigation has matured into the filing of a complaint, the FINRA Code of Procedure affords a respondent several procedural rights and that its investigatory process should not be fundamentally altered as a result of the proposed rule change.[49] FINRA also notes that the current rule provides FINRA staff with the right to inspect and copy books, records, and accounts of members, associated persons and others subject to FINRA's jurisdiction ''with respect to any matter involved in the investigation, complaint, examination or proceeding,'' and because the rule is purposefully designed to cover a broad range of activities, concerns about limiting the scope of the rule are misplaced.[50]

3. Participation in Charitable, Non-Profit, and Board Service

Three commenters indicated that FINRA Rule 8210(a)(2), as proposed to be amended, may inhibit or discourage individuals in the securities industry from participating in charitable, non-profit, and board service due to the potential for third party organizations to have to provide private or confidential documents owned by the organization to FINRA.[51] FINRA responded that it did not find merit in the suggestion by these commenters that adopting the ''possession, custody or control'' language in FINRA Rule 8210(a)(2) would chill the likelihood of associated persons participating in non-profit entities due to fear by those entities that their documents would be disclosed during FINRA investigations.[52] FINRA stated further that in as much as board members of non-profit organizations often are employed in a for-profit industry, FINRA found no greater likelihood that a non-profit corporation's confidential information would be disclosed because they have associated persons as board members than if their board members were not associated with the securities industry.[53]

4. Additional Analysis and Consideration of the Proposed Rule Change

Two commenters recommended that FINRA engage in additional analysis and consideration with respect to the proposed rule change and the process and protections afforded to members, associated persons, and others over whom FINRA has jurisdiction.[54] FINRA did not directly respond to these recommendations; however, FINRA's Response to Comments and its filing of Amendment Nos. 1 and 2, which, as discussed below, limit the scope of the proposed rule change, reflect FINRA's efforts to engage in such additional analysis and consideration of the proposed rule change.

[33] *See* Schwab Letter.

[34] *See* Wells Fargo Letter.

[35] *Id.*

[36] *See* Schwab Letter.

[37] *Id.*

[38] *Id.*

[39] *See* Wells Fargo Letter.

[40] *See* Schwab Letter and SIFMA Letter.

[41] *Id.*

[42] *Id.*

[43] *See* Response to Comments, *supra* note 5.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *See* Schwab Letter; SIFMA Letter; and Wells Fargo Letter.

[52] *See* Response to Comments, *supra* note 5.

[53] *Id.*

[54] *See* Schwab Letter and SIFMA Letter.

5. Notice to Unregistered Persons and Members and Persons Represented by Counsel

FINRA did not receive any specific comments on its proposals under Rule 8210(d) to specify the method of service for certain unregistered persons and to authorize service on members or persons that are known to be represented by counsel.

6. Comment Outside the Scope of the Proposed Rule Change

One commenter expressed concern regarding a witness's ability to access a written transcript of on-the-record testimony in a FINRA proceeding.[55] FINRA responded that this comment is outside the scope of the proposed rule change.[56]

B. Description of Amendment Nos. 1 and 2

After further consideration and analysis of the proposed rule change and the comments thereon, on December 21, 2011, FINRA filed Amendment No. 1, in which it proposed to add Supplementary Material limiting the scope of its proposal.[57] On December 5, 2012, FINRA filed Amendment No. 2 to modify a phrase in the proposed Supplementary Material.[58]

First, the proposed Supplementary Material would provide that books, records and accounts of a broker-dealer, associated person or person subject to FINRA's jurisdiction (as referenced in Rule 8210(a)), would include those books, records and accounts that the broker-dealer or its associated persons would make or keep relating to its operation as a broker-dealer or relating to the person's association with the member.[59] This would include, but not be limited to, investigations of outside business activities, private securities transactions, or possible violations of just and equitable principles of trade, as well as other FINRA rules, MSRB rules, and the federal securities laws.[60]

The proposed Supplementary Material also would clarify that books, records and accounts of a broker-dealer, associated person or person subject to FINRA's jurisdiction would not ordinarily include books and records that are in the possession, custody or control of a member or associated person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the member.[61]

Finally, the proposed Supplementary Material would provide that a FINRA member, associated person, or person subject to FINRA's jurisdiction must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as an attorney, accountant, or other professional service provider, but the FINRA member, associated person, or person subject to FINRA's jurisdiction controls or has a right to demand them.[62]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment Nos. 1 and 2, the comment letters received, and FINRA's response and finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[63] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[64] The Commission believes that FINRA, in its Response to Comments and Amendment Nos. 1 and 2, adequately addressed the comments raised in response to the Notice.

Current FINRA Rule 8210 confers on FINRA staff authority to compel a member, person associated with a member, or other person subject to FINRA's jurisdiction, to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding. Additionally, the current rule provides FINRA with the authority to inspect and copy the books, records, and accounts of all applicable members and persons with respect to any matter involved in the investigation, complaint, examination, or proceeding. FINRA's proposed rule, as modified by Amendment Nos. 1 and 2, clarifies that information subject to a FINRA Rule 8210 request must be in the member's or person's ''possession, custody or control'' and explicitly provides the methods by which certain types of notice must be made. These changes will help eliminate existing confusion with respect to the scope of FINRA Rule 8210. The proposed rule change, as modified by Amendment Nos. 1 and 2, also will further the purposes of the Exchange Act by, among other things, clarifying and streamlining the requirements surrounding providing information and testimony and inspecting and copying books and records. The clarifying nature of the proposed rule, as modified by Amendment Nos. 1 and 2, will be helpful to FINRA members in understanding the scope of, and notice requirements under, Rule 8210, and will assist FINRA in facilitating investigations and fulfilling its responsibilities as a self-regulatory organization under the Exchange Act.

V. Accelerated Approval

The Commission finds goods cause, pursuant to Section 19(b)(2) of the Act,[65] for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after publication of Amendment Nos. 1 and 2 in the **Federal Register**. The changes proposed in Amendment Nos. 1 and 2 respond to specific concerns raised by commenters and do not raise novel regulatory concerns. In particular, Amendment Nos. 1 and 2 clarify the scope of FINRA Rule 8210 and FINRA's authority to inspect and copy the books, records and accounts of members and persons with respect to any matter involved in an investigation, complaint, examination, or proceeding. The proposed rule, as modified by Amendment Nos. 1 and 2, also furthers FINRA's investor protection mandate.

Accordingly, the Commission finds that good cause exists to approve the

[55] *See* BTUD Letter.

[56] *See* Response to Comments, *supra* note 5.

[57] *See* Amendment No. 1, *supra* note 6.

[58] *See* Amendment No. 2, *supra* note 7.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.* Amendment No. 1 also makes a technical change to the text of Rule 8210 to reflect the addition of paragraph (g) to the Rule, which was added through a separate and unrelated intervening proposed rule change that was submitted and became effective subsequent to the filing of this proposal. *See* Exchange Act Release No. 63016 (Sep. 29, 2010), 75 FR 61793 (Oct. 6, 2010) (Order Approving Proposed Rule Change; File No. SR–FINRA–2010–021). This change has no effect on the text of Rule 8210(g), which requires the encryption of certain information provided via portable media device. *Id.*

[63] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[64] 15 U.S.C. 78*o*–3(b)(6).

[65] 15 U.S.C. 78s(b)(2).

proposal, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 to the proposed rule change are consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–060 and should be submitted on or before January 3, 2013.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[66] that the proposed rule change (SR–FINRA–2009–060), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30049 Filed 12–12–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68383; File No. SR–NYSEMKT–2012–72]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 952NY With Respect to Opening Trading in an Options Series

December 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 26, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 952NY (Trading Auctions) with respect to opening trading in an options series. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 952NY to provide for how the System[3] may open an options series for trading when there are no executable orders and/or quotes and the bid-ask differential of the NBBO disseminated by Options Price Reporting Authority (''OPRA'') or a Market Maker quote does not exceed the bid-ask differential specified under Rule 925NY(b)(4). The Exchange's Rules are currently silent on how the System opens an options series when it does not conduct an auction. Specifically, the proposed rule change (i) will codify that the Exchange opens an option series when there are no executable orders and/or quotes to match up in the System (''open a series on a quote''), which is currently based on the bid-ask differentials that are within the acceptable range defined in Rule 925NY(b)(4); and (ii) will also amend the current process to provide that the bid-ask differential to allow for the System to open a series on a quote would be based on the bid-ask differentials specified in Rule 925NY(b)(5), which are wider than the bid-ask differential that allows for the System to open via an auction during the Auction Process.

Current Opening Process

Currently, Rule 952NY describes the process pursuant to which the System opens an option series. Pursuant to the procedures described in Rule 952NY(b) and (c), after the primary market for the underlying security disseminates the opening trade or opening quote, the System conducts an ''Auction Process'' to open a series whereby the System determines a single price at which a series may be opened by looking either to: (i) the midpoint of the initial uncrossed NBBO disseminated by the Options Price Reporting Authority

66 15 U.S.C. 78(b)(2).

67 17 CFR 200.30–3(a)(12).

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b–4.

3 The term ''System'' refers to the Exchange's electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display.

(''OPRA''), or (ii) the midpoint of the best quotes or orders in the System Book. If the bid-ask differential for a series is not within an acceptable range, the System will not open the series for trading. For purposes of this rule, the acceptable range means the bid-ask differential guidelines specified in Rule 925NY(b)(4) (''narrow-width quotes'').[4] Assuming the bid-ask differential is within the acceptable range, the System matches up orders and quotes in the system based on price-time priority and executes the orders that are matched at the midpoint pricing. Any orders in the System Book that are not executed in the Auction Process become eligible for the Core Trading Session immediately after the conclusion of the Auction Process.

In addition, although not currently specified in the rule, if the bid-ask differential is within the acceptable range, but there are no orders or quotes to be matched up with one another, the System will open the series for trading on a disseminated quote, at which point any unexecuted orders in the System Book during the Auction Process become eligible for the Core Trading Session. If the bid-ask differential is not within the acceptable range, the Exchange will not open that series for trading until the System either receives a narrow-width NBBO from OPRA or a Market Maker submits a narrow-width quote.

Proposed Change to Opening Process

The Exchange proposes to amend Rule 952NY both to specify that the System may open a series on a quote when there are no executable orders and/or quotes and to amend the rule to provide a different bid-ask differential for opening a series on a quote. As noted above, the Exchange currently uses the narrow-width quote bid-ask differential for determining both whether to open with an auction (when there are executable orders and/or quotes) or with a quote (when there are no executable orders and/or quotes). In codifying the process for opening a series on a quote, the Exchange proposes to adopt the bid-ask differential specified under Rule 925NY(b)(5) instead of the narrow-width quotes.[5]

Rule 925NY(b)(5) provides that options traded on the System during Core Trading Hours may be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid (''standard-width quote''). As proposed, if there are no executable orders and/or quotes, but the OX System either receives a standard-width quote NBBO from OPRA in that series or a Market Maker submits a standard-width quote in the option series, the Exchange shall open the series on a quote. The proposed change will align the requirements to open the unopened series on a quote with the existing Market Marker quoting requirements during Core Trading Hours.

While the Exchange believes that narrow-width quoting requirements are beneficial for opening auctions pursuant to the Auction Process in the System, the Exchange believes that the continued application of the narrow-width quoting requirement when there are no executable quotes and/or orders to conduct an auction has the opposite effect and prevents series from opening promptly and thus unnecessarily delays the execution of orders on the Exchange. The Exchange believes that setting a wider quote differential requirement for opening on a quote would expedite the opening of all options series on the Exchange promptly after the opening of the underlying security. The Exchange believes that market participants will benefit by having the ability to execute orders on the Exchange without unnecessary delay. In addition, applying the standard-width quote bid-ask differential for opening a series on a quote is consistent with the quoting requirements that are applicable during Core Trading Hours.

The Exchange further believes that applying the standard-width quote for determining when to open a series on a quote is appropriate because it would more closely align the Exchange's rules with the rules of other option exchanges with respect to opening a series. Other options exchanges have the ability to open a series for trading when there are no executable orders and/or quotes to conduct an auction. Both BOX Options Exchange (''BOX'') and NASDAQ Options Market (''NOM''), allow for the opening of series without conducting an opening auction. Neither BOX nor NOM require any bid-ask differential to be met prior to opening series for trading on a quote. Specifically, on BOX, the BOX system attempts to conduct an opening match (similar to Auction Process) to determine a single price at which a particular option series will be opened.[6] During, the ''Pre-Opening Phase'' on BOX, narrow bid-ask differentials are required in a similar manner to the Exchange. However, if the BOX system is not able to determine an opening price, the option series will nevertheless move from the ''Pre-Opening Phase'' to the continuous trading phase and the option series will be open for trading. When the option series move from Pre-Opening Phase to the continuous trading phase, there is no requirement for a bid-ask differential to be met. Market makers on BOX would only be required to meet the $5 bid-ask differential in the option series if and when they ever decided to quote.[7] Similarly, NOM has no bid-ask differential requirements to open a series if an ''Opening Cross'' (similar to Trading Auction) cannot be initiated because there are no opening quotes or orders that lock or cross each other.[8] Specifically, if an Opening Cross cannot be initiated because there are no opening quotes or orders that lock or cross each other, the option series will open for trading on NOM.[9] Market makers on NOM would only be required to meet the $5 bid-ask differentials in the option series if and when they ever decided to quote.[10] Both, BOX and NOM could open options series and disseminate a protected quotation without the benefit of Market Maker quotation to facilitate price discovery.

By contrast, currently, if the options series does not meet the narrow-width quotes, the series will not open at all on the Exchange, which differs from BOX and NOM. As noted above, neither BOX nor NOM require any bid-ask differential to be met prior to opening series for trading on a quote. The current inability of the Exchange to open a series without executable quotes and/or orders subject to a standard-width quote requirement puts the Exchange at a competitive disadvantage to other options exchanges that do not have that similar restriction. By not opening the option series, the Exchange cannot display orders on its Consolidated Book and thus has no protected quotation in the options series. Until the options series officially opens for trading, the Exchange cannot route out orders on its Consolidated

[4] *See* Exchange Rule 925NY(b)(4). The bid-ask guidelines specified in Rule 925NY(b)(4) that are required to open a series are narrower than the $5 wide bid-ask differential for options traded on the System during Core Trading Hours. *See also* Exchange Rule 925NY(b)(5). Rule 925NY(b)(5) provides that options traded on the System during Core Trading Hours may be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid.

[5] Currently, if there are executable orders and/or quotes and the options series does not meet the narrow-width quote bid-ask differential, but does meet the standard-width quote differential, the Exchange will not open the options series for trading. *See* Exchange Rule 952NY(b)(D).

[6] *See* BOX Rule 7070(e).

[7] *See* BOX Rule 7070(f). *See also* BOX Rule 8040, which sets forth BOX market maker quoting obligations.

[8] *See* NOM Chapter VI, Section 8(c)(1).

[9] *See id.*

[10] *See* NOM Chapter VII, Section 6(d).

Book pursuant to Linkage, nor can it have a protected quote that draws trading interest from other options markets. The Exchange believes that the delay in execution of orders on the Exchange in this situation is unnecessary and harmful to market participants. The Exchange's proposal would provide for the ability to open a option series on a quote in a similar fashion as both BOX and NOM, but in a more prudent and conservative manner that the Exchange believes better protects investors and other market participants. The Exchange believes that having a bid-ask differential requirement to open a series is beneficial for opening series and helps ensure there is a sufficient quoted market in the options series, whether it is via NBBO from OPRA or Market Maker generated quote, prior to opening of the series on the Exchange to facilitate transactions in securities on the Exchange.

To clarify that Rule 952NY governs the opening process, which includes both trading auctions and opening on a quote, the Exchange also proposes to amend the title of the rule by deleting the phrase ''Trading Auction'' and replacing it with ''Opening Process.'' In addition, the Exchange proposes to clarify that the term ''Auction Process'' refers to the opening procedures set forth in Rule 952NY(b)(A)–(D), when the Exchange opens an options series for trading when there are orders and/or quotes that can be matched at a single price point.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change is designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would permit the Exchange to open a series when there are not sufficient orders or quotes to conduct an auction after receiving notification from OPRA that an NBBO has been established for the series or on a Market Maker quote, provided that the bid-ask differential of the NBBO does not exceed the standard-quote width bid-ask differential. The wider quote differential requirement for openings when an Auction Process is not conducted will expedite the opening of all options series on the Exchange promptly after the opening of the underlying security, and thus remove impediments to and perfect the mechanism of a free and open market in a way that benefits market participants and enables them to execute their orders on the Exchange.

The proposed rule change contributes to the protection of investors and the public interest by maintaining the narrow-width quote bid-ask differentials for the Auction Process, which provides price protection for customers and other market participants when they have executable orders and quotes prior to the opening of a series on the Exchange.

The proposal would provide fair and orderly means to open a series when the Exchange does not have sufficient executable quotes and/or orders to conduct an Auction Process and would reasonably ensure that the Exchange does not open the series at a price that is beyond the price at which Market Makers are permitted to quote for the series during the Core Trading Session, which also contributes to the protection of investors and the public interest, generally. The proposed rule change is also designed to promote just and equitable principles of trade because it would permit the Exchange to open a series in a manner that is more consistent with the opening of individual series on other option exchanges.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* notes 6 and 8.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–72 and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30048 Filed 12–12–12; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68381; File No. SR–NYSEMKT–2012–77]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Modify the NYSE Amex Options Fee Schedule Regarding the Manner in Which Funds From Marketing Charges Are Controlled

December 7, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 30, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule with respect to the manner in which funds from marketing charges are controlled. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the NYSE Amex Options Fee Schedule with respect to the manner in which funds from marketing charges are controlled.[4]

The Exchange currently imposes a marketing charge against a Market Maker that trades against an electronic customer order.[5] Currently, the pool of monies resulting from the collection of marketing charges on electronic non-Directed Order flow is controlled by the Specialist or the e-Specialist with superior volume performance over the previous quarter for distribution by the Exchange at the direction of such Specialist or e-Specialist to eligible payment accepting firms.[6] The pool of monies resulting from collection of marketing charges on electronic Directed Order flow is controlled by the NYSE Amex Options Market Maker to which the order was directed and distributed by the Exchange at the direction of such NYSE Amex Options Market Maker to payment accepting firms.[7]

Notwithstanding the description above, an ATP Holder that submits an Electronic Complex Order to the Exchange may designate an NYSE Amex Options Market Maker to control the pool of monies resulting from the collection of marketing charges related thereto, regardless of whether such Market Maker is assigned to the particular class, and such funds are distributed by the Exchange at the direction of such designated NYSE Amex Options Market Maker to payment accepting firms.[8] The Exchange proposes to expand this method of control of marketing charge funds, such that an ATP Holder that submits *any* electronic non-Directed Order to the Exchange may designate an NYSE Amex Options Market Maker to control the pool of monies resulting from the collection of marketing charges related thereto, regardless of whether such Market Maker is assigned to the particular class, and such funds will be distributed by the Exchange at the direction of such designated NYSE Amex Options Market Maker to payment accepting firms. As is currently the case for Electronic Complex Orders, if an ATP Holder submits an electronic non-Directed Order to the Exchange without designating an NYSE Amex Options Market Maker, the pool of monies resulting from the collection of such marketing charges will be distributed in the same manner as is currently applicable for non-Directed Order flow, as described above.

The Exchange recently learned that other option exchanges allow their market participants to have access to those exchanges' marketing fee funds, regardless of whether the market participant has an appointment in the class in which the order is received and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange is not proposing any changes to the current rates of the marketing charges. The marketing charge is currently $0.65 per contract side on transactions in non Penny Pilot issues where Market Makers trade against electronic customer orders or $0.25 per contract side on transactions in Penny Pilot issues where Market Makers trade against electronic customer orders.

[5] *See* endnote 9 in the Fee Schedule. Broker Dealer and Professional Customer electronic orders that trade contra to a Market Maker do not result in the collection of marketing charges, nor do executed Qualified Contingent Cross orders.

[6] *See* endnote 10 in the Fee Schedule. In making this determination, the Exchange, on a class by class basis, evaluates Specialist and e-Specialist performance based on the number of electronic contracts executed at the Exchange per class. The Specialist/e-Specialist with the best volume performance will control the pool of marketing charges collected on electronic non-Directed Order flow for these issues for the following quarter.

[7] *See* endnote 10 in the Fee Schedule.

[8] *See* endnote 10 in the Fee Schedule. If an ATP Holder submits an Electronic Complex Order to the Exchange without designating an NYSE Amex Options Market Maker, the pool of monies resulting from the collection of such marketing charges is distributed in the same manner as non-Directed Order flow, as described above.

executed.[9] As such, the Exchange has decided to permit the same on its market for all electronic orders.

The Exchange believes that permitting a Market Maker to control marketing charge funds generated from all electronic non-Directed Orders, regardless of whether the order is for a class in which the Market Maker is assigned, may allow Market Makers to encourage greater order flow to be sent to the Exchange. A Market Maker could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. The Exchange believes that this increased order flow would benefit all market participants on the Exchange. Indeed, a Market Maker would likely often not even be the direct beneficiary of the increased order flow, since the Market Maker would not trade with that order (as the Market Maker is not assigned to that class). The market participants who can trade with that order would be the direct beneficiaries. Allowing a Market Maker to control marketing charge funds generated from an electronic non-Directed Order, regardless of whether the order is for a class in which the Market Maker is assigned, would provide a Market Maker with an incentive to encourage the routing of order flow into classes in which the Market Maker otherwise would not (i.e., classes in which the Market Maker is not assigned or quoting). Further, this will also provide Market Makers with more flexibility to change their assignments, as they will not have to be concerned with whether or not they have made arrangements to pay for order flow in a specific class prior to changing assignments.

Therefore, the Exchange proposes that an ATP Holder that submits any electronic non-Directed Order to the Exchange may designate an NYSE Amex Options Market Maker to control the pool of monies resulting from the collection of marketing charges related thereto, regardless of whether such Market Maker is assigned to the particular class, and such funds will be distributed by the Exchange at the direction of such designated NYSE Amex Options Market Maker to payment accepting firms. The Exchange proposes to amend endnote 10 in the Fee Schedule, as necessary, to reflect this proposed change. The purpose of this proposed change is to encourage the direction of increased order flow to the Exchange, to allow Market Makers more flexibility to change classes to which they are appointed, and to place the Exchange on even competitive footing with other option exchanges.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding marketing charges and that the Exchange is not aware of any problems that ATP Holders, Market Makers or any other market participants on the Exchange would have in complying with the proposed change. The Exchange proposes to implement these changes on December 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable because it will allow Market Makers greater access to marketing charge funds. In this regard, the Exchange believes that permitting a Market Maker to control marketing charge funds generated from all electronic non-Directed Orders, regardless of whether the order is for a class in which the Market Maker is assigned, may allow Market Makers to encourage greater order flow to be sent to the Exchange. A Market Maker could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Indeed, a Market Maker would likely often not even be the direct beneficiary of the increased order flow, since the Market Maker would not trade with that order (as the Market Maker is not assigned to that class). The market participants who can trade with that order would be the direct beneficiaries. Allowing a Market Maker to control marketing charge funds generated from an electronic non-Directed Order, regardless of whether the order is for a class in which the Market Maker is assigned, would provide a Market Maker with an incentive to encourage the routing of order flow into classes in which the Market Maker otherwise would not (i.e., classes in which the Market Maker is not assigned or quoting). Further, this will also provide Market Makers with more flexibility to change their assignments, as they will not have to be concerned with whether or not they have made arrangements to pay for order flow in a specific class prior to changing assignments.

The Exchange also believes that the proposal is reasonable because other option exchanges allow their market participants to have access to and control those exchanges' marketing fee funds, regardless of whether the market participant has an appointment in the class in which the order is received and executed.[13] As such, the Exchange has decided to permit the same on its market.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it is designed to allow Market Makers to encourage greater order flow to be sent to the Exchange. A Market Maker could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Further, allowing a Market Maker to control marketing charge funds generated from an electronic non-Directed Order, regardless of whether the order is for a class in which the Market Maker is assigned, would provide a Market Maker with an incentive to encourage the routing of order flow into classes in which the Market Maker otherwise

[9] The Exchange understands that this is currently permitted on the Chicago Board Options Exchange (''CBOE''), the International Securities Exchange (''ISE'') and NASDAQ OMX PHLX (''PHLX''). *See* (i) footnote 6 in the CBOE Fee Schedule; (ii) the section in the PHLX Pricing Schedule pertaining to Payment for Order Flow Fees; and (iii) Section IV(D) of the ISE Fee Schedule, respectively, none of which contain requirements that a market maker (or similar market participant) have an appointment in the class in which an electronic order is received and executed in order to have access to the marketing charge funds generated from that order. *See also* Securities Exchange Act Release No. 68131 (November 1, 2012), 77 FR 67032 (November 8, 2012) (SR–CBOE–2012–101).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 9.

would not (i.e., classes in which the Market Maker is not assigned or quoting).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–77. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–77, and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30046 Filed 12–12–12; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68380; File No. SR–NYSEMKT–2012–76]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 903 To Provide That the Exchange May Not List Short Term Option Series Expirations That Coincide With the Expiration of Quarterly Option Series on the Same Class

December 7, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on November 30, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b-4(f)(6) thereunder,[5] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 903 to provide that the Exchange may not list Short Term Option Series (''STOS'') expirations that coincide with the expiration of Quarterly Option Series on the same class. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 903 to provide that the Exchange may not list Short Term Option Series (''STOS'') expirations that coincide with the expiration of Quarterly option series on the same class.

Exchange Rule 903(h) currently provides that no STOS may expire in the same week in which monthly or Quarterly option series on the same class expire. When the STOS Program was originally established in 2006, the Exchange could not list expirations in the same week as the monthly expiration.[6] Quarterly options series on the Exchange were subsequently added in 2006.[7] The Exchange, as part of the Quarterly options series Rules, adopted a provision in Commentary .09 of 903 that provided that the ''Exchange will not list a Short Term Options Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.''[8] In 2010, the Exchange added to the Rule 903(h) that no STOS expirations could be added in the same week as the Quarterly options series expiration.[9]

NYSE Arca Options Rule 6.4, Commentary .07, provides that no STOS may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly options series, on an expiration that coincides with an expiration of Quarterly option series on the same class.[10] For example, if the Quarterly options series would expire on a Monday, since Monday does not coincide (not the same day) as Friday when STOS would normally expire, NYSE Arca Options and other options exchanges could list a STOS expiration for that week. In contrast, pursuant to current Exchange Rule 903(h), the Exchange could not list STOS that expire on that Friday in the same week that Quarterly options series expires on Monday.

The Exchange proposes to adopt the same language that is used for NYSE Arca Options to ensure conformity between the options exchanges. The proposed change would allow the Exchange to list STOS expirations the same week as Quarterly option series, but not on a day that coincides or is the same as the expiration of Quarterly option series on the same class. The Exchange believes that the STOS Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. The Exchange believes that this proposal would eliminate inconsistencies in expirations between the STOS Programs of two exchanges and help provide the investing public and other market participants with additional opportunities to hedge their investment, thus allowing these investors to better manage their risk exposure.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring conformity between STOS Programs on competing options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because waiver of the operative delay will allow the Exchange to clarify its own rules as well as list STOs on the same dates as other exchanges without undue delay. Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] *See* Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR–Amex–2005–035).

[7] *See* Securities Exchange Act Release No. 54137 (July 12, 2006), 71 FR 41283 (July 20, 2006) (SR–Amex–2006–67).

[8] *See id.*

[9] *See* Securities Exchange Act Release No.62370 (June 23, 2010), 75 FR 37870 (June 30, 2010) (SR–NYSEAmex–2010–62).

[10] Other options exchanges have similar rules. *See* Chicago Board Options Exchange, Incorporated Rule 5.5(d)(2); NASDAQ OMX PHLX LLC Rule 1012, Commentary .11(b).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–76 and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30045 Filed 12–12–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8117]

Designation of Hamad el Khairy, Also Known as Abderrahmane Ould Mohamed Lemine Ould Mohamed Khairy, Also Known as Hamada Ould Mohamed Kheirou, Also Known as Abou Qumqum, Also Known as Amada Ould Kheirou, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Hamad el Khairy, also known as Abderrahmane Ould Mohamed Lemine Ould Mohamed Khairy, also known as Hamada Ould Mohamed Kheirou, also known as Abou Qumqum, also known as Amada Ould Kheirou, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 4, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–30128 Filed 12–12–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8115]

In the Matter of the Review of the Designation of the Al-Shabaab (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: December 4, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–30135 Filed 12–12–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8114]

In the Matter of the Designation of Movement for Unity and Jihad in West Africa; Also Known as Movement for Oneness and Jihad in West Africa; Also Known as Unity Movement for Jihad in West Africa; Also Known as Jamat Tawhid Wal Jihad Fi Garbi Afriqqiya; Also Known as Tawhid Wal Jihad in West Africa; Also Known as MUJWA; Also Known as MUJAO; Also Known as TWJWA as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Movement for Unity and Jihad in West Africa, also known as Movement for Oneness and Jihad in West Africa, also known as Unity Movement for Jihad in West Africa, also known as Jamat Tawhid Wal Jihad Fi Garbi Afriqqiya, also known as Tawhid Wal Jihad in West Africa, also known as MUJWA, also known as MUJAO, also known TWJWA, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 4, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–30125 Filed 12–12–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8116]

In the Matter of the Designation of Ahmed el Tilemsi, Also Known as Ahmed Tilemsi, Also Known as Abderrahmane Ould el Amar, Also Known as Abderrahmane Toudji, Also Known as Abderrahmane Ouid Ameur, Also Known as Ahmed Telemsi as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ahmed el Tilemsi, also known as Ahmed Tilemsi, also known as Abderrahmane Ould el Amar, also known as Abderrahmane Toudji, also known as Abderrahmane Ouid Ameur, also known as Ahmed Telemsi, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 4, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–30138 Filed 12–12–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Review of National Environmental Policy Act Categorical Exclusion Survey Posted on DOT/FHWA Web Site

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability.

SUMMARY: In accordance with section 1318(a)(2) of the *Moving Ahead for Progress in the 21st Century Act* (MAP–21) the FHWA and the FTA have surveyed the use of Categorical Exclusions (CE) by the Department in transportation projects since 2005, described the types of actions categorically excluded and any requests previously received by the Secretary for new CEs, and completed a solicitation of requests for new CEs from State departments of transportation (SDOT), transit authorities, metropolitan planning organizations (MPO), or other government agencies. This survey review captures the results of these activities.

The FHWA and FTA are issuing this notice to advise the public that the CE survey review is now available on the FHWA Web site, *http://www.fhwa.dot.gov/map21,* and FTA Web site, *http://www.fta.dot.gov/map21*.

DATES: These reports were posted on the Web site on December 7, 2012.

ADDRESSES: The CE survey review is posted on the FHWA Web site at: *http://www.fhwa.dot.gov/map21*.

FOR FURTHER INFORMATION CONTACT: Owen Lindauer, Ph.D., Office of Project Delivery and Environmental Review (HEPE), (202) 366–2655, or Jomar Maldonado, Office of the Chief Counsel (HCC), (202) 366–1373, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001. For the Federal Transit Administration: Megan Blum, Office of Planning and Environment (TPE), (202) 366–0463, or Dana Nifosi, Office of Chief Counsel (TCC), (202) 366–4011. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1318 of MAP–21 (112 Pub. L. 141, 126 Stat. 405) requires a survey of CE use for transportation projects since 2005, a description of CE actions and any requests for new CEs received by the Secretary since 2005, and a solicitation request for new CEs from a variety of stakeholders. The statute requires publication of the survey.

To comply with the survey requirement, the FHWA and FTA reviewed the administrative records of rulemakings for new FHWA and/or FTA CEs since 2005 and in the Department's review of regulations in 2011. The administrative records for the rulemakings included Notice of Proposed Rulemakings (NPRM), public comments on these rulemakings, and as final rules associated with these NPRMs, as applicable (72 FR 44038 (Aug. 7, 2007), Docket No. FTA–2006–26604 and 77 FR 15310 (Mar. 15, 2012), Docket No. FTA–2011–0056). In addition, FHWA and FTA reviewed requests for new CEs received as a part of the assessment of Federal regulations in response to the President's Executive Order 13563 (Improving Regulation and Regulatory Review, January 18, 2011). The request for new CEs was documented in the Retrospective Review and Analysis of Existing Rules (Department of Transportation, August 2011). Also, in September 2012, the Secretary sent a questionnaire, OMB Control No. 2125–0632, to SDOTs, transit authorities, MPOs, local public agencies, and federally recognized Tribal Governments asking for actions they request for consideration as new CEs through rulemaking.

The questionnaire asked SDOTs, transit authorities, MPOs, and federally recognized Tribal Governments to provide information on:

- CEs processed as a part of the NEPA for transportation projects since 2005;

• Types of actions categorically excluded;
• Requests previously received by the Secretary of Transportation for new CEs that are not currently in regulation; and
• Requests for new CEs.

The Secretary sent the invitation to participate in the survey electronically to 1,511 individuals from SDOTs, transit authorities, MPOs, and federally recognized Tribal Governments. The survey period ran from September 5, 2012, through October 9, 2012. Responses were collected online and through email. Respondents were encouraged to provide electronic documents and other materials to supplement their answers. Five hundred twenty-two individuals responded to the questionnaire. The SDOT respondents represented 40 States, the District of Columbia, and Puerto Rico.

The FHWA and FTA have compiled the responses and completed the MAP–21 survey report. The purpose of this notice is to comply with the publication requirement for the survey report. The report is available online at *www.fhwa.dot.gov/map21* and *http://www.fta.dot.gov/map21*.

Authority: Sec. 1318(a)(2), Pub. L. 112–141, 126 Stat. 405 (2012).

Issued on: December 7, 2012.

Victor Mendez,

Administrator, Federal Highway Administration.

Peter Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. 2012–30085 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0309]

Agency Information Collection Activities; New Information Collection Request: Driver and Carrier Surveys Related to Electronic On-Board Recorders (EOBRs), and Potential Harassment Deriving From EOBR Use

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this new ICR is to broadly examine by the collection of survey data, the issue of driver harassment and determine the extent to which Electric On-Board Recorders (EOBRs) used to document drivers' hours of service could also be used by motor carriers or enforcement personnel to harass drivers and/or monitor driver productivity. The survey will also collect information on the extent to which respondents believe that the use of EOBRs may result in coercion of drivers by motor carriers, shippers, receivers and transportation intermediaries. The proposed surveys for drivers and carriers collect information related to issues of EOBR harassment of drivers by carriers. FMCSA will publish a supplemental notice of proposed rulemaking on EOBRs and will consider survey results concerning the EOBR use by motor carriers including countermeasures or best practices to ensure that EOBRs are not used by carriers to harass or coerce drivers prior to the issuance of a final rule.

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2012—0309 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–00001.
• *Hand Delivery or Courier.* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m. e.t. Monday through Friday, except Holidays.
• Fax 1–202–493–2251.

To avoid duplication, please use only one of these four methods. Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The FDMS docket is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Albert Alvarez, Research Division, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. *Telephone:* (202 385–2387); email *albert.alvarez@dot.gov.* Requests for additional information or copies of the information collection instrument and instructions should be directed to Gene Bergoffen, Principal, MaineWay Services, P.O. Box 166, Fryeburg, ME 04037. *Telephone:* 207 935–7948; email *bergoffen@roadrunner.com.*

SUPPLEMENTARY INFORMATION:

Background

Motor carrier management and oversight of drivers' hours-of-service (HOS) is one of the fundamental concerns of FMCSA. Motor carriers began to look to automated methods of recording drivers' record of duty status (RODS) in the mid-1980s as a way to save drivers time and improve the efficiency of their compliance assurance procedures. In April 1985, the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the U.S. Department of Transportation (DOT), granted the first of 10 waivers to allow use of on-board computers in lieu of requiring drivers to complete handwritten RODS.

After conducting notice-and-comment on the rulemaking regarding automated methods of recording RODS, the Agency issued a final rule on September 30, 1988. The rule revised part 395 of the Federal Motor Carrier Safety Regulations (FMCSRs) by allowing motor carriers the flexibility to equip commercial motor vehicles (CMVs) with an automatic on-board recording device (AOBRD) in lieu of requiring drivers to complete handwritten RODS. The term ''automatic on-board recording device'' was defined under § 395.2 as follows:

''an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.''

On April 5, 2010, FMCSA published a final rule to incorporate new performance standards for electronic on-board recorders (EOBRs) installed in CMVs manufactured on or after June 4, 2012. The new rule also required installation of EOBRs meeting the new performance standards in CMVs operated by motor carriers found by the Agency to have serious HOS noncompliance. EOBRs would have been required to automatically record the CMV's location at each change of duty status and at intervals while the CMV is in motion. Current on-board recorders were not required to do this. To ensure a smooth transition from AOBRDs to EOBRs, the final rule would have required that for CMVs manufactured on or after June 4, 2012, devices installed by a manufacturer or motor carrier would need to have met the requirements of § 395.16. Commercial motor vehicles manufactured prior to June 4, 2012 could be equipped with an HOS recording device that met the requirements of either § 395.15 (AOBRD) or § 395.16.

The 2010 EOBR rule was challenged in court based in part on concerns that EOBRs could be used to harass drivers. *Owner-Operators Independent Drivers Association v. U.S. Department of Transportation,* 656 F.3d 580 (7th Cir. 2011). At the time, a new rulemaking by FMCSA had been started that proposed to require certain motor carriers operating CMVs in interstate commerce to use EOBRs to document their drivers' HOS (76 FR 5537, February 1, 2011). Based on issues raised in the litigation on the April 2010 final rule, FMCSA published a notice requesting public comment on the harassment issue on April 13, 2011 (76 FR 20612). The Agency sought and received comments on the following items:

- Experiences drivers have had regarding harassment, including coercion by carriers to evade the HOS regulations;
- Whether such carrier activity would be permitted as productivity monitoring or would be barred by other statutory or regulatory provisions;
- Whether use of EOBRs would impact the ability of carriers, shippers, and other parties to harass or coerce drivers to violate HOS requirements;
- The effectiveness of mechanisms currently available under 49 CFR 392.3, 49 CFR part 395 and 49 U.S.C. 31105(a) to protect against carrier coercion; and
- Whether additional regulations or guidance from FMCSA are necessary to ensure that EOBR devices are not used to harass vehicle operators.

On August 26, 2011, the U.S. Court of Appeals for the Seventh Circuit vacated the Agency's April 2010 final rule on the use of EOBRs. The court stated that contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The court also noted that the Agency had not estimated the safety benefits of EOBRs currently in use and how much EOBRs increased compliance. The basis for the court's decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a). At the time of the court's decision, the statute read as follows:

USE OF MONITORING DEVICES. If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

As a result of the court's ruling, carriers relying on electronic devices to monitor HOS compliance are currently governed by the rules that address the use of AOBRDs as in effect immediately before the court's ruling (49 CFR 395.15). These rules were not affected by the court's decision. On May 14, 2012, FMCSA rescinded the April 5, 2010 final rule, as amended September 13, 2010, in response to the court's decision to vacate the rulemaking. FMCSA had previously announced its intent to move forward with a rule on electronic logging devices with a supplemental notice of proposed rulemaking (SNPRM) (77 FR 7562 (February 13, 2012)). Congress subsequently mandated that the Secretary of Transportation adopt regulations requiring that commercial motor vehicles involved in interstate commerce, operated by drivers who are required to keep records of duty status (RODS), be equipped with electronic logging devices. (MAP–21, Pub. L. 112–141, § 32301(b), 126 Stat. 405, 786–788 (July 6, 2012), amending 49 U.S.C. 31137). The legislation retained the requirement that regulations ensure such devices not be used to harass drivers of CMVs. MAP–21 also required that certain regulations governing CMV safety ensure that drivers of CMVs are not coerced into operating in violation of regulations to be promulgated (Pub. L. 112–141, § 32911. 126 Stat. at 818 (amending 49 U.S.C. 31136(a)).

The objectives of the proposed driver and carrier surveys through this ICR are to broadly examine the issue of driver harassment and coercion and determine the extent to which EOBRs could be used to either harass and/or monitor driver productivity. These surveys will explore the relevant issues from the point of view of both drivers and carriers towards the use of EOBRs. The survey results will inform FMCSA in its ongoing rulemaking on EOBRs, including potential countermeasures or best practices that will ensure that EOBRs are not used to harass or coerce CMV drivers. The purpose of these surveys is, in part, to respond to the court's suggestion that the Agency research the issue of driver harassment based on use of the device.

Title: Driver and Carrier Surveys Related to Electronic On-Board Recorders (EOBRs), and Potential Harassment Deriving from EOBR Use.

OMB Control Number: 2126–XXXX.

Type of Request: New ICR.

Respondents: Commercial motor vehicle drivers and carriers.

Estimated Number of Respondents: 1,039 [(2 carrier in-depth interviews + 20 carrier pre test web interviews + 400 carrier main survey web interviews + 100 carrier non-response telephone follow up interviews) + (7 driver in-depth interviews + 510 driver intercept interviews) = 1,039].

Estimated Time per Response: 30 minutes for in-depth interviews of drivers and motor carriers; 20 minutes for carrier survey; 20 minutes for the driver survey; 10 minutes for the telephone interview of carriers with non-responses.

Expiration Date: N/A.

Frequency of Response: Once.

Estimated Total Annual Burden: 110.5 hours [(2 carrier in-depth interviews × 30 minutes/60 minutes + 20 carrier pre-test web interviews × 20 minutes/60 minutes + 400 carrier main survey web interviews × 20 minutes/60 minutes + 100 carrier non-response telephone follow up interviews × 10 minutes/60 minutes) + (7 driver in-depth interviews × 30 minutes/60 minutes + 510 driver intercept interviews × 20 minutes/60 minutes)/3 year approval) = 110.5].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the information to be collected; and (4) ways that the estimated annual burden could be minimized without reducing the quality of the collected information.

Issued on: December 3, 2012.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2012–30143 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0313]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Transportation of Household Goods; Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise an ICR entitled, *''Transportation of Household Goods; Consumer Protection.''* The information collected will be used to help regulate motor carriers transporting household goods (HHG) for individual shippers.

DATES: Please send your comments by January 14, 2013. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0313. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to *http://www.regulations.gov* or faxed to (202) 395–7245, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Mack, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–8045; email *brodie.mack@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Transportation of Household Goods; Consumer Protection.

OMB Control Number: 2126–0025.

Type of Request: Revision of a currently-approved information collection.

Respondents: 6,000 household goods movers.

Estimated Time per Response: Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 12.5 minutes to distribute consumer publication.

Expiration Date: December 31, 2013.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 5,524,500 hours [Informational documents provided to prospective shippers at 43,500 hours + Written Cost estimates for prospective shippers at 4,620,000 hours + Service orders, bills of lading at 805,300 hours + In-transit service notifications at 22,600 hours + Complaint and inquiry records including establishing records system at 32,700 hours + Household Goods—Consumer Complaint Form MCSA–2P at 400 hours = 5,524,500].

Background: The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1749, December 9, 1999) authorized the Secretary of Transportation (Secretary) to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the former Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Pub. L. 104–88). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA–LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, ''Transportation of Household Goods; Consumer Protection Regulation.'' On July 16, 2012, FMCSA published a Direct Final Rule (DFR) entitled, ''Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Household Goods Motor Carrier Record Retention Requirements,'' in the **Federal Register** (77 FR 41699). The rule amends the regulations governing the period during which HHG motor carriers must retain documentation of an individual shipper's waiver of receipt of printed copies of consumer protection materials. This change harmonizes the retention period with other document retention requirements applicable to HHG motor carriers. FMCSA also amended the regulations to clarify that a HHG motor carrier is not required to retain waiver documentation from any individual shippers for whom the carrier does not actually provide services. The Agency did not receive any comments in response to the DFR.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: December 7, 2012.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2012–30148 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0379]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

DATES: We must receive your comments on or before February 11, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0379 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf*.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling and Gerald Folsom, Ph.D., Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–385–2405/2412; email *tura.gatling@dot.gov and gerald.folsom@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environment restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

Title: Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Revision of a currently-approved information collection.

Respondents: Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

Estimated Number of Respondents: 6,074.

Estimated Time per Response: The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or three minutes for the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle (foreign-domiciled motor carriers only) [49 CFR 387.7(f)]. These endorsements are maintained at the motor carrier's principal place of business [49 CFR 387.7 (iii) (d)].

Expiration Date: March 31, 2013.

Frequency of Response: Upon creation, change or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 4,480 hours [(3,874 annual burden hours for Form MCS–90B, Form MCS–90, Form MCS–82B and Form MCS–82) + (606 annual burden hours for placing legible copies of the carrier's Insurance Endorsements or Surety Bonds in the cabs of all vehicles operated in the United States) = 4,480].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: December 7, 2012.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2012–30146 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0349]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 14, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0349 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 12 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Dennis W. Baseman

Mr. Baseman, 73, has had ITDM since 2004. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Baseman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Baseman meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Kathy L. Brown

Ms. Brown, 60, has had ITDM since 1962. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Brown understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Brown meets the vision requirements of 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2012 and certified that she has stable proliferative diabetic retinopathy. She holds a Class B CDL from Indiana.

Charles K. Eudy

Mr. Eudy, 55, has had ITDM since 1970. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eudy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eudy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

John C. Evans

Mr. Evans, 49, has had ITDM since 1980. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Evans understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Evans meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Thomas J. Ferry

Mr. Ferry, 35, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ferry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ferry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Jeffrey C. Hanson

Mr. Hanson, 49, has had ITDM since 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Jeffrey D. Kivett

Mr. Kivett, 59, has had ITDM since 2002. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kivett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Kivett meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Indiana.

Bryan M. Laffin

Mr. Laffin, 44, has had ITDM since approximately 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Laffin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Laffin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class C operator's license from Maryland.

Peter W. Prime

Mr. Prime, 51, has had ITDM since 2005. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Prime understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prime meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

David E. Wagner

Mr. Wagner, 51, has had ITDM since 1992. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wagner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wagner meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Daniel V. Williamson

Mr. Williamson, 63, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williamson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williamson meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Charles F. Woodford

Mr. Woodford, 46, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Woodford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woodford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: December 3, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30088 Filed 12–12–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0354; FMCSA–2010–0287; FMCSA–2004–18885; FMCSA–2008–0292]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 33 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 12, 2013. Comments must be received on or before January 14, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2010–0354; FMCSA–2010–0287; FMCSA–2004–18885; FMCSA–2008–0292], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 33 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 33 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Charles H. Akers, Jr. (VA)
David B. Albers, Sr. (UT)
Kurtis A. Anderson (SD)
Terry L. Anderson (PA)
Sammy J. Barada (NE)
Timothy Bradford (TN)
Cody W. Cook (OK)
Marvin R. Daly (SC)
Douglas K. Esp (MT)
Roger C. Evans, II (WI)
Jevont D. Fells (AL)
Steven C. Fox (NC)
Gary A. Golson (AL)
Donald L. Hamrick (KS)
Eugene W. Harnisch (WI)
William E. Jacobs (TX)
Matthew C. Kalebaugh (KS)
Timothy R. McCullough (FL)
Marcus L. McMillin (FL)
George C. Milks (NY)
Daniel R. Murphy (WI)
Thomas L. Oglesby (GA)
Garrick Pitts (AR)
Jonathan C. Rollings (IA)
Preston S. Salisbury (MT)
Victor M. Santana (CA)
Kevin W. Schaffer (IL)
Gerald E. Skalitzky (WI)
Allen W. Smith (KS)
George A. Teti (FL)
David W. Ward (NC)
Patricia A. White (IL)
Ralph W. York (NM)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 33 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (69 FR 53493; 69 FR 64742; 71 FR 62148; 73 FR 61922; 73 FR 61925; 73 FR 74563; 75 FR 59327; 75 FR 69737; 75 FR 72863; 75 FR 77949 76 FR 1499; 76 FR 2190). Each of these 33 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 14, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 33 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 3, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30112 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012–0110]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MELLO MOON; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 14, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2012–0110. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MELLO MOON is:

Intended Commercial Use of Vessel: ''Six pack passenger charters.''

Geographic Region: South Carolina, Georgia, Florida. The complete application is given in DOT docket MARAD–2012–0110 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 6, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–29939 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0215]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments of a previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** notice with a 60-day comment period soliciting comments on the following information collections was published on August 27, 2012, (77 FR 51848) under docket number PHMSA–2012–0094. No comments were received. The purpose of this notice is to allow the public an additional 30 days to send comments to OMB on the information collections described below.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Wether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Pipeline Safety: Control Room Management/Human Factors.

OMB Control Number: 2137–0624.

Type of Request: Renewal of a Previously Approved Information Collection.

Current Expiration Date: 1/31/2013.

Abstract: 49 CFR 192.631 and 195.446 address human factors and other components of control room management. These regulations require operators of hazardous liquid pipelines and gas pipelines to develop and implement a human factors management plan designed to reduce risk associated with human factors in each control room.

Affected Public: Operators of both natural gas and hazardous liquid pipeline systems.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 2,702.

Total Annual Burden Hours: 127,328.

Frequency of Collection: On occasion.

Title: Integrity Management Program for Gas Distribution Pipelines.

OMB Control Number: 2137–0625.

Type of Request: Renewal of a Previously Approved Information Collection.

Current Expiration Date: 1/31/2013.

Abstract: The Federal Pipeline Safety Regulations in 49 CFR, Part 192, Subpart P require operators of gas distribution pipelines to develop and implement integrity management (IM) programs. The purpose of these programs is to enhance safety by identifying and reducing pipeline integrity risks. PHMSA requires that operators maintain records demonstrating compliance with these requirements for 10 years and that these records must include superseded IM plans.

Affected Public: Operators of gas distribution pipeline systems.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 9,343.

Total Annual Burden Hours: 865,178.

Frequency of Collection: On occasion.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended, and 49 CFR 1:48.

Issued in Washington, DC, on December 10, 2012.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2012–30096 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0302]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0605, titled ''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.'' PHMSA is preparing to request approval from OMB for a renewal of the currently approved information collection.

DATES: Interested persons are invited to submit comments on or before February 11, 2013.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. DOT, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2012–0302, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2012–0302.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. The information collection expires May 31, 2013, and is identified under Control No. 2137–0605, titled: ''Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.'' The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity. PHMSA requests comments on the following information collection:

Title: Integrity Management in High Consequence Areas for Operators of Hazardous Liquid Pipelines.

OMB Control Number: 2137–0605.

Current Expiration Date: 5/31/2013.

Abstract: Hazardous liquid operators with pipelines located in or that could affect high consequence areas (i.e., commercially navigable waterways, high population areas, other populated areas, and unusually sensitive areas as defined in 49 CFR 195.450) are subject to certain information collection requirements relative to the Integrity Management Program provisions of 49 CFR 195.452.

Affected Public: All pipeline operators of hazardous liquid pipelines located in or that could affect high consequence areas.

Annual Reporting and Recordkeeping Burden:

Annual Responses: 203.

Annual Burden Hours: 325,470.

Frequency of collection: On Occasion.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 10, 2012.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2012–30097 Filed 12–12–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 10, 2012.

The Department of the Treasury is planning to submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Comments should be received on or before February 11, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to Louisa M. Quittman, Director, Financial Education, Office of Consumer Policy, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. (202) 622–5770.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Office of Consumer Policy

OMB Number: 1505–0242.

Type of Review: Revision of a currently approved collection.

Title: Assessing Financial Capability Outcomes.

Abstract: Pursuant to the Title XII of the Dodd-Frank Wall Street Reform and Financial Protection Act (Pub. L. 111–203), the Department of the Treasury is implementing an Assessing Financial Capability Outcomes pilot to determine whether the close integration of financial access (access to an account at a financial institution) and financial education delivered in a timely, relevant, and actionable manner, will create significant impact on the financial behaviors and/or outcomes of participants. The information collected will be used for research, to promote the Treasury's understanding of likely outcomes of financial capability interventions.

Affected Public: Individuals or households, non-profit organizations, state, tribal or local government entities, businesses or other for-profit entities.

Estimated Total Annual Burden Hours: 3,843.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–30083 Filed 12–12–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal Without Change of the Requirement for Information Sharing Between Government Agencies and Financial Institutions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning the renewal without change of the ''Information sharing between government agencies and financial institutions'' under 31 CFR 1010.520, generally referred to as the 314(a) program.

DATES: Written comments are welcome and must be received on or before February 11, 2013.

ADDRESSES: Direct all written comments to the Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—314(a) program. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov* with the caption in the body of the text, ''Attention: PRA Comments— 314(a) program.''

Inspection of comments. Comments may be inspected between 10 a.m. and 4 p.m. in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 3.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA PATRIOT ACT'' or ''Act''), Public Law 107–56. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (''BSA''), codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance.

As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

> [t]he Secretary shall * * * adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in, or reasonably suspected based on credible evidence of engaging in, terrorist acts or money laundering activities.[1]

B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.[2] That rule (''the 314(a) rule'') required U.S. financial institutions, upon FinCEN's request, to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected, based on credible evidence, of engaging in terrorist activity or money laundering.[3] The rule was expanded on February 10, 2010 to enable certain entities other than Federal law enforcement agencies to benefit from 314(a) requests to industry. As amended, the rule now also enables certain foreign law enforcement agencies, state and local law enforcement agencies, as well as FinCEN, on its own behalf and on behalf of appropriate components of the Department of the Treasury, to initiate 314(a) queries.[4] Before processing a request, FinCEN requires the requesting agency to certify that, in the case of

[1] Pub. L. 107–56, Title III, § 314, Oct. 26, 2001, 115 Stat. 307, as amended by Public Law 108–458, Title VI, § 6202(f), Dec. 17, 2004, 118 Stat 3745.

[2] Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

[3] 31 CFR 1010.520.

[4] Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity, 75 FR 6560 (Feb. 10, 2010).

money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use the 314(a) program.

Since its inception, the 314(a) program has yielded significant investigative benefits for law enforcement users in terrorist financing and/or significant money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN seeks to renew without change the 314(a) program.

II. Paperwork Reduction Act (''PRA''): [5]

Title: Information sharing between government agencies and financial institutions.

OMB Number: 1506–0049.

Form Number: Not Applicable.

Abstract: 31 CFR Chapter X, Information sharing between government agencies and financial institutions (31 CFR 1010.520) details the requirements of section 314(a) of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X part for any additional special information sharing procedures.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Businesses or other for-profit and non-profit organizations, and the Federal, state, and local governments.

Frequency: As required.

Estimated Number of Respondents: 20,134.[6]

Estimated Time per Respondent: 54 hours annually.[7]

Estimated Total Annual Burden Hours: 1,087,236.[8]

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. In accordance with 31 CFR § 1010.330(e)(3), a person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 5, 2012.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–30121 Filed 12–12–12; 8:45 am]

BILLING CODE 4810–02–P

[5] The Paperwork Reduction Act does not apply to the requirement in section 1010.520(b)(2) concerning reports by financial institutions in response to a request from FinCEN on behalf of a Federal law enforcement agency. *See* 5 CFR § 1320.4(a)(2). Therefore, this renewal applies only to the use of the 314(a) program with respect to queries initiated by non-federal law enforcement entities.

[6] On an annual basis, there are approximately 20,134 covered financial institutions, consisting of commercial banks, savings associations, credit unions, securities broker-dealers, future commission merchants, and certain trust companies, life insurance companies, mutual funds and money services businesses.

[7] Estimated cases/subjects per annum subject to the Paperwork Reduction Act include: 10 from FinCEN, 50 from state/local law enforcement, and 30 from European Union countries approved by treaty, for a total of 90 request per annum, and each request generally contains 9 subjects (including aliases). Each subject requires 4 minutes to research, resulting in $(90 \times 9 \times 4 \div 60) = 54$ hours per year.

[8] Burden computation is as follows: 54 hours per year per respondent times 20,134 respondents $(54 \times 20{,}134) = 1{,}087{,}236$ hours.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0746]

Proposed Information Collection (Internet Student CPR Web Registration Application); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish an online web registration application.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 11, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0746'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or Fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Internet Student CPR Web Registration Application, VA Form 10–0468.

OMB Control Number: 2900–0746.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 10–0468 will be used to establish a roster on students attending courses provided by the Minneapolis VA Medical Center Education Service. Students will be able to identify and register for a training course online without waiting for the Registrar to return calls or emails to confirm enrollment.

Affected Public: Individuals or households.

Estimated Annual Burden: 125

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Bi-Annually.

Estimated Number of Responses: 1,500.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–29996 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0743]

Agency Information Collection (Pre-Discharge Compensation Claim): Activity under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0743'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 FAX (202) 632–7583 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0743.''

SUPPLEMENTARY INFORMATION:

Title: Pre-Discharge Compensation Claim, VA Form 21–526c.

OMB Control Number: 2900–0743.

Type of Review: Extension of a currently approved collection.

Abstract: The Pre-Discharge Compensation Claim form will be used by service members to file claims under the Benefits Delivery at Discharge or Quick Start programs. VA will use the data collected as the required certification statement needed from claimants to confirm that the information they provided is true and correct.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2012, at page 60028.

Affected Public: Individuals or households.

Estimated Annual Burden: 40,250.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 161,000.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–30008 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0704]

Agency Information Collection (VA/DOD Joint Disability Evaluation Board Claim): Activity under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0704'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 FAX (202) 632–7583 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0704.''

SUPPLEMENTARY INFORMATION:

Title: VA/DOD Joint Disability Evaluation Board Claim, VA Form 21–0819.

OMB Control Number: 2900–0704.

Type of Review: Extension of a currently approved collection.

Abstract: As a result of President Bush's Interagency Task Force on Returning Global War on Terror Heroes, VA and the Department of Defense (DOD) have agreed to develop a joint process in which Global War on Terror (GWOT) service member's are evaluated to assign disability ratings, which will be used to determine military retention, level of disability for retirement, and VA disability compensation. VA Form 21–0819 will be used to gather the necessary information to determine the service member's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2012, at pages 60746–60747.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–30007 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0691]

Proposed Information Collection (Learner's Perception (LP) Survey); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 11, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0691'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Learner's Perception (LP) Survey, VA Form 10–0439.

OMB Control Number: 2900–0691.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0439 will be use to obtain health care trainees perception of their clinical experience with VA versus non-VA facilities. VA will use the data to identify strengths and opportunities for improvement in VA clinical training programs.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–29995 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Agency Information Collection (Award Attachment for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0577'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 FAX (202) 632–7583 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0577.''

SUPPLEMENTARY INFORMATION:

Title: Award Attachment for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of veterans who have spina bifida with information about a VA health care and vocational training and the steps they must take to apply for such benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2012, at page 60746.

Affected Public: Individuals or households.

Estimated Annual Burden: 19 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 75.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–29997 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Agency Information Collection (Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0572'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 FAX (202) 632–7583 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0572.''

SUPPLEMENTARY INFORMATION:

Title: Application for Benefits for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0304 is used to gather the necessary information to determine a claimant's eligibility for a monetary allowance and appropriate level of payment. Under Title 38 U.S.C 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of, certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain birth defects resulting in permanent physical or mental disability.

Under title 38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant of parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975 or after the date the veteran first served in or near the demilitarized zone in Korea during the period September 1, 1967 to August 31, 1971. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina Bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2012, at pages 60745–60746.

Affected Public: Individuals or households.

Estimated Annual Burden: 72 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 430.

Dated: December 7, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–29993 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Agency Information Collection (Claim for Repurchase of Loan) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0377'' in any correspondence

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492, FAX (202) 632–7583 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0377.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Repurchase of Loan, VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of delinquent vendee accounts guaranteed by VA complete VA Form 26–8084 to request a repurchase of a loan that has been in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments. VA notifies the obligor(s) in writing of the loan repurchased, and that the vendee account will be service and maintain by VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2012, at page 60747.

Affected Public: Business or other for-profit

Estimated Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20.

Dated: December 7, 2012.

By direction of the Secretary:

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–29998 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment to an existing system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify its existing system of records ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26)''.

DATES: Comments on the proposed modifications to the routine uses must be received no later than 30 days after date of publication in the **Federal Register**, on or before January 14, 2013. If no public comment is received during the period allowed for comments, the routine use will become effective January 14, 2013.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 10638, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Erica Lewis, Loan Specialist, Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 632–8823.

SUPPLEMENTARY INFORMATION: The Department is proposing to amend its system of records entitled ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26)'' by adding a new Routine Use 35 to permit VA to share information about a borrower's mortgage loan status with a Servicemember's Commanding Officer or designee who might be able to assist VA in either helping a borrower cure a default or avoid foreclosure or eviction.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine use proposed for the transfer of this information is appropriate.

A copy of the revised system notice has been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 3791618, July 25, 1994).

The proposed routine use will be added to the system of records entitled ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records–VA (55VA26)'' as published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; 62 FR 35545, July 1, 1997; and 67 FR 72721, December 6, 2002.

Approved: October 9, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26)'', published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; 62 FR 35545, July 1, 1997; and 67 FR 72721 December 6, 2002, is revised to add a new Routine Use Number 35 as follows:

55VA26

SYSTEM NAME:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

35. Any information in this system may be disclosed to a servicemember's commanding officer or designee if VA determines that sharing this information is necessary in order to reach a servicemember who has otherwise not responded to VA to attempt to assist in curing a default or resolving a foreclosure or eviction of a VA-guaranteed or direct loan.

[FR Doc. 2012–30086 Filed 12–12–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 240 December 13, 2012

Part II

Commodity Futures Trading Commission

17 CFR Parts 39 and 50

Clearing Requirement Determination Under Section 2(h) of the CEA; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 50

RIN 3038–AD86

Clearing Requirement Determination Under Section 2(h) of the CEA

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to establish a clearing requirement under new section 2(h)(1)(A) of the Commodity Exchange Act (CEA or Act), enacted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The regulations require that certain classes of credit default swaps (CDS) and interest rate swaps, described herein, be cleared by a derivatives clearing organization (DCO) registered with the Commission. The Commission also is adopting regulations to prevent evasion of the clearing requirement and related provisions.

DATES: The rules will become effective February 11, 2013. Specific compliance dates are discussed in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, 202–418–5684, *sjosephson@cftc.gov;* Brian O'Keefe, Associate Director, 202–418–5658, *bokeefe@cftc.gov;* or Erik Remmler, Associate Director, 202–418–7630, *eremmler@cftc.gov,* Division of Clearing and Risk, Camden Nunery, Economist, 202–418–5723, *cnunery@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Clearing Requirement Proposal

On August 7, 2012, the Commission published a notice of proposed rulemaking (NPRM) to establish a clearing requirement under new section 2(h)(1)(A) of the CEA, as provided for under section 723 of Title VII of the Dodd-Frank Act.[1] The Commission proposed that swaps meeting the specifications identified in two classes of CDS and four classes of interest rate swaps, and available for clearing by an eligible DCO, would be required to be cleared. The Commission also proposed rules related to the prevention of evasion of the clearing requirement and prevention of abuse of an exception or exemption to the clearing requirement. The Commission is hereby adopting §§ 50.1–50.6 and § 50.10, subject to the changes discussed below.

B. Financial Crisis

In the fall of 2008, a series of large financial institution failures triggered a financial and economic crisis that threatened to freeze U.S. and global credit markets. As a result of these failures, unprecedented governmental intervention was required to ensure the stability of the U.S. financial system.[2] These failures revealed the vulnerability of the U.S. financial system and economy to widespread systemic risk resulting from, among other things, poor risk management practices of financial firms and the lack of supervisory oversight for a financial institution as a whole.[3]

The financial crisis also illustrated the significant risks that an uncleared, over-the-counter (OTC) derivatives market can pose to the financial system. As the Financial Crisis Inquiry Commission explained:

> The scale and nature of the [OTC] derivatives market created significant systemic risk throughout the financial system and helped fuel the panic in the fall of 2008: millions of contracts in this opaque and deregulated market created interconnections among a vast web of financial institutions through counterparty credit risk, thus exposing the system to a contagion of spreading losses and defaults.[4]

Certain OTC derivatives, such as CDS, played a prominent role during the crisis. According to a white paper by the U.S. Department of the Treasury, ''the sheer volume of these [CDS] contracts overwhelmed some firms that had promised to provide payment of the CDS and left institutions with losses that they believed they had been protected against.'' [5] In particular, AIG reportedly issued uncleared CDS transactions covering more than $440 billion in bonds, leaving it with obligations that it could not cover as a result of changed market conditions.[6] As a result of AIG's CDS exposure, the Federal government bailed out the firm with over $180 billion of taxpayer money in order to prevent AIG's failure and a possible contagion event in the broader economy.[7]

More broadly, the President's Working Group (PWG) on Financial Markets noted shortcomings in the OTC

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[1] Clearing Requirement Determination Under Section 2(h) of the CEA; Proposed Rule, 77 FR 47170 (Aug. 7, 2012).

[2] On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, which was principally designed to allow the U.S. Department of the Treasury and other government agencies to take action to restore liquidity and stability to the U.S. financial system (*e.g.,* the Troubled Asset Relief Program—also known as TARP—under which the U.S. Department of the Treasury was authorized to purchase up to $700 billion of troubled assets that weighed down the balance sheets of U.S. financial institutions). *See* Public Law 110–343, 122 Stat. 3765 (2008).

[3] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at xxviii, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[4] *See id.* at 386.

[5] *Financial Regulatory Reform: A New Foundation,* June 2009, available at *http://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf* and cited in S. Rep. 111–176 at 29–30 (Apr. 30, 2010).

[6] Adam Davidson, ''How AIG fell apart,'' Reuters, Sept. 18, 2008, available at *http://www.reuters.com/article/2008/09/18/us-how-aig-fell-apart-idUSMAR85972720080918.*

[7] Hugh Son, ''AIG's Trustees Shun 'Shadow Board,' Seek Directors,'' Bloomberg, May 13, 2009, available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aaog3i4yUopo&refer=us.*

derivative markets as a whole during the crisis. The PWG identified the need for an improved integrated operational structure supporting OTC derivatives, specifically highlighting the need for an enhanced ability to manage counterparty risk through ''netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades.'' [8] These issues were exposed in part by the surge in collateral required between counterparties during 2008, when the International Swaps and Derivatives Association (ISDA) reported an 86% increase in the collateral in use for OTC derivatives, indicating not only the increase in risk, but also circumstances in which positions may not have been collateralized.[9]

With only limited checks on the amount of risk that a market participant could incur, great uncertainty was created among market participants. A market participant did not know the extent of its counterparty's exposure, whether its counterparty was appropriately hedged, or if its counterparty was dangerously exposed to adverse market movements. Without central clearing, a market participant bore the risk that its counterparty would not fulfill its payment obligations pursuant to a swap's terms (counterparty credit risk). As the financial crisis deepened, this risk made market participants wary of trading with each other. As a result, markets quickly became illiquid and trading volumes plummeted. The dramatic increase in ''TED spreads'' evidenced this mistrust.[10] These spreads increased from a long-term average of approximately 30 basis points to 464 basis points.[11]

The failure to adequately collateralize the risk exposures posed by OTC derivatives, along with the contagion effects of the vast web of counterparty credit risk, led many to conclude that OTC derivatives should be centrally cleared. For instance, in 2008, the Federal Reserve Bank of New York (FRBNY) began encouraging market participants to establish a central counterparty to clear CDS.[12] For several years prior, the FRBNY had led a targeted effort to enhance operational efficiency and performance in the OTC derivatives market by increasing automation in processing and by promoting sound back office practices, such as timely confirmation of trades and portfolio reconciliation. Beginning with CDS in 2008, the FRBNY and other primary supervisors of OTC derivatives dealers increasingly focused on central clearing as a means of mitigating counterparty credit risk and lowering systemic risk to the markets as a whole. Both regulators and market participants alike recognized that risk exposures would have been monitored, measured, and collateralized through the process of central clearing.

C. Central Role of Clearing in the Dodd-Frank Act

Recognizing the peril that the U.S. financial system faced during the financial crisis, Congress and the President came together to pass the Dodd-Frank Act in 2010. Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for swaps, and the requirement that swaps be cleared by DCOs is one of the cornerstones of that reform. The CEA, as amended by Title VII, now requires a swap: (1) To be cleared through a DCO if the Commission has determined that the swap, or group, category, type, or class of swap, is required to be cleared, unless an exception to the clearing requirement applies; (2) to be reported to a swap data repository (SDR) or the Commission; and (3) if the swap is subject to a clearing requirement, to be executed on a designated contract market (DCM) or swap execution facility (SEF), unless no DCM or SEF has made the swap available to trade.[13]

Clearing is at the heart of the Dodd-Frank financial reform. According to the Senate Report: [14]

> As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and reporting will provide safeguards for American taxpayers and the financial system as a whole.

The Commission believes that a clearing requirement will reduce counterparty credit risk and provide an organized mechanism for collateralizing the risk exposures posed by swaps. According to the Senate Report: [15]

> With appropriate collateral and margin requirements, a central clearing organization can substantially reduce counterparty risk and provide an organized mechanism for clearing transactions. * * * While large losses are to be expected in derivatives trading, if those positions are fully margined there will be no loss to counterparties and the overall financial system and none of the uncertainty about potential exposures that contributed to the panic in 2008.

Notably, Congress did not focus on just one asset class, such as CDS; rather, Congress determined that all swaps that a DCO plans to accept for clearing must be submitted to the Commission for a determination as to whether or not those swaps are required to be cleared pursuant to section 2(h)(2)(D) of the CEA.

D. G–20 and International Commitments on Clearing

The financial crisis generated international consensus on the need to strengthen financial regulation by improving transparency, mitigating systemic risk, and protecting against market abuse. As a result of the widespread recognition that transactions in the OTC derivatives market increased risk and uncertainty in the global economy and became a significant contributor to the financial crisis, a series of policy initiatives were undertaken to better regulate the financial markets.

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[8] The President's Working Group on Financial Markets, ''Policy Statements on Financial Market Developments,'' Mar. 2008, available at *http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf.*

[9] ISDA, ISDA Margin Survey, 2009, available at *http://www.isda.org/c_and_a/pdf/ISDA-Margin-Survey-2009.pdf.*

[10] The TED spread measures the difference in yield between three-month Eurodollars as represented by London Interbank Offered Rate (LIBOR), and three-month Treasury Bills. LIBOR contains credit risk while T-bills do not. As the spread got larger, it meant that lenders demanded more return to compensate for credit risk than they would need if they loaned the money to the U.S. Department of the Treasury without any credit risk.

[11] The U.S. Financial Crisis: Credit Crunch and Yield Spreads, by James R. Barth et al., page 5, available at *http://apeaweb.org/confer/bei08/papers/blp.pdf.*

[12] *See* Federal Reserve Bank of New York, Press Release, ''New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives,'' Oct. 31, 2008, available at *http://www.newyorkfed.org/newsevents/news/markets/2008/an081031.html,* which references documents prepared by market participants describing the importance of clearing. *See also* Ciara Linnane and Karen Brettell, ''NY Federal Reserve pushes for central CDS counterparty,'' Reuters, Oct. 6, 2008, available at *http://www.reuters.com/article/2008/10/06/cds-regulation-idUSN0655208920081006.*

[13] The Commission has proposed rules that would establish a separate process for determining whether a swap has been made ''available to trade'' by a DCM or SEF. Those rules, and any determinations made under those rules, will be finalized separately from the clearing requirements discussed herein. *See* Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade Under Section 2(h)(8) of the Commodity Exchange Act, 76 FR 77728 (Dec. 14, 2011).

[14] S. Rep. 111–176, at 32 (April 30, 2010). *See also* Letter from Senators Christopher Dodd and Blanche Lincoln to Congressmen Barney Frank and Collin Peterson (June 30, 2010) (''Congress determined that clearing is at the heart of reform—bringing transactions and counterparties into a robust, conservative, and transparent risk management framework.'').

[15] S. Rep. 111–176, at 33.

In September 2009, leaders of the Group of 20 (G–20)—whose membership includes the United States, the European Union, and 18 other countries—agreed that: (1) OTC derivatives contracts should be reported to trade repositories; (2) all standardized OTC derivatives contracts should be cleared through central counterparties and traded on exchanges or electronic trading platforms, where appropriate, by the end of 2012; and (3) non-centrally cleared contracts should be subject to higher capital requirements.

In June 2010, the G–20 leaders reaffirmed their commitment to achieve these goals. In its October 2010 report on Implementing OTC Derivatives Market Reforms (the October 2010 Report), the Financial Stability Board (FSB) made 21 recommendations addressing practical issues that authorities may encounter in implementing the G–20 leaders' commitments.[16] The G–20 leaders again reaffirmed their commitments at the November 2011 Summit, including the end-2012 deadline. The FSB has issued three implementation progress reports. The most recent report urged jurisdictions to push forward aggressively to meet the G–20 end-2012 deadline in as many reform areas as possible. On mandatory clearing, the report observed that ''[j]urisdictions now have much of the information they requested in order to make informed decisions on the appropriate legislation and regulations to achieve the end-2012 commitment to centrally clear all standardised OTC derivatives.'' [17]

Specifically with regard to required clearing, the Technical Committee of the International Organization of Securities Commissions (IOSCO) has published a final report, *Requirements for Mandatory Clearing,* outlining recommendations that regulators should follow to carry out the G–20's goal of requiring standardized swaps to be cleared.[18]

Nations around the world have been preparing for the move to mandatory clearing. For example, the Japanese Financial Services Authority (JFSA) has proposed requiring certain financial institutions to clear yen-denominated interest rate swaps that reference LIBOR and CDS that reference the Japanese iTraxx indices by the end of 2012. After that, the requirement will be expanded to other entities engaging in these swaps. In addition, the JFSA is considering expanding its mandatory clearing coverage to include U.S. dollar- and euro-denominated interest rate swaps, as well as yen-denominated interest rate swaps referencing TIBOR. The JFSA also will consider mandating single-name CDS referencing Japanese reference entities, and index and single-name CDS on North American and European reference entities.

The Monetary Authority of Singapore (MAS) released a consultation paper addressing mandatory clearing on February 13, 2012. Based on a preliminary review MAS expects Singapore dollar interest rate swaps, U.S. dollar interest rate swaps, and Asian currency non-deliverable forwards to meet its proposed mandatory clearing criteria. Additional swaps will be considered for mandatory clearing via clearinghouse submission or upon the review of MAS.

The Securities and Futures Commission and Hong Kong Monetary Authority jointly released a consultation paper addressing mandatory clearing on October 17, 2011. This consultation plan described a phased implementation approach where clearing requirements will initially cover standardized interest rate swaps and non-deliverable forwards. Hong Kong regulators have said they will consider extending the mandatory clearing requirements in subsequent phases. In July, the Hong Kong regulators published consultation conclusions and stated that the precise mandatory clearing obligations would be set out in subsidiary legislation which they will be consulting on in the fourth quarter of 2012.

On April 18, 2012, the Australian Council of Financial Regulators published a consultation on a number of OTC derivatives, including mandatory clearing. The Council of Financial Regulators is developing advice for the government which is expected to adopt legislation by end-2012.

Finally, in the European Union, specific clearing determinations have yet to be made. However, the European Markets Infrastructure Regulation (EMIR) provides that contracts become subject to the clearing obligation through either a ''bottom up'' approach or a ''top down'' approach. The ''bottom up'' approach is where a national authority authorizes a central counterparty (CCP) to clear certain classes of OTC derivatives. The ''top down'' approach is where the European Securities and Markets Authority (ESMA) identifies classes of OTC derivatives which should be subject to the clearing obligation but for which no CCP is authorized to clear. Based on this framework, ESMA has the authority to make clearing determinations for classes of OTC derivative contracts.

With the adoption of these final rules, the Commission is taking a critical step toward meeting the G–20 commitment and fulfilling the requirements of the Dodd-Frank Act. The Commission has consulted with authorities from around the globe to ensure that our efforts are as coordinated as possible.

E. Overview of Section 2(h) and § 39.5

The Commission promulgated § 39.5 of its regulations to implement procedural aspects of section 2(h) of the CEA.[19] Regulation 39.5 establishes procedures for: (1) Determining the eligibility of a DCO to clear swaps; (2) the submission of swaps by a DCO to the Commission for a clearing requirement determination; (3) Commission initiated reviews of swaps; and (4) the staying of a clearing requirement.

The determinations and rules adopted in this release implement the clearing requirement under section 2(h) of the CEA for certain swaps and require that those swaps must be submitted for clearing to Commission-registered DCOs. Under section 2(h)(1)(A), ''it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' [20]

A clearing requirement determination may be initiated by a swap submission. Section 2(h)(2)(B)(i) of the CEA requires a DCO to ''submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members of the submission.'' In addition under section 2(h)(2)(B)(ii) of the CEA, ''[a]ny swap or group, category, type, or class of swaps listed for clearing by a [DCO] as of the date of enactment shall be considered submitted to the Commission.''

[16] *See* ''Implementing OTC Derivatives Market Reforms,'' Financial Stability Board, Oct. 25, 2010, available at *http://www.financialstabilityboard.org/publications/r_101025.pdf.*

[17] OTC Derivatives Working Group, ''OTC Derivatives Market Reforms: Third Progress Report on Implementation,'' Financial Stability Board, June 15, 2012, available at *http://www.financialstabilityboard.org/publications/r_120615.pdf.*

[18] IOSCO's report, published in February 2012, is available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD374.pdf.*

[19] *See* 76 FR 44464 (July 26, 2011); 17 CFR 39.5.

[20] *See* section 2(h) of the CEA. The Commission also may conduct a Commission-initiated review of swaps for required clearing. Section 2(h)(2)(A)(i) of the CEA requires the Commission on an ongoing basis to ''review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap, category, type or class of swaps should be required to be cleared.''

F. Submissions from DCOs

On February 1, 2012, Commission staff sent a letter requesting that DCOs submit all swaps that they were accepting for clearing as of that date, pursuant to § 39.5 of the Commission's regulations.[21] The Commission received submissions relating to CDS and interest rate swaps from: The International Derivatives Clearinghouse Group (IDCH)[22] on February 17, 2012; the CME Group (CME), ICE Clear Credit, and ICE Clear Europe, each dated February 22, 2012; and a submission from LCH.Clearnet Limited (LCH) on February 24, 2012.[23]

The clearing requirement determinations and rules adopted in this release cover certain CDS and interest rate swaps currently being cleared by a DCO. The Commission intends subsequently to consider other swaps submitted by DCOs, such as agricultural, energy, and equity indices.

As stated in the NPRM, the decision to focus on CDS and interest rate swaps in the initial clearing requirement determinations is a function of both the market importance of these swaps and the fact that they already are widely cleared. In order to move the largest number of swaps to required clearing in its initial determinations, the Commission believes that it is prudent to focus on those swaps that have the highest market shares and, accordingly, the biggest market impact. Further, for these swaps there is already a blueprint for clearing and appropriate risk management. CDS and interest rate swaps fit these considerations and therefore are well suited for required clearing consideration.[24]

Notably, market participants recommended that the Commission take this approach, and comments received on the NPRM supported this approach as well.[25] In addition, interest rate swaps account for about $500 trillion of the $650 trillion global OTC swaps market, in notional dollars—the highest market share of any class of swaps.[26] LCH claims to clear about $302 trillion of those—meaning that, in notional terms, LCH clears approximately 60% of the interest rate swap market.[27] While CDS indices do not have as prominent a market share as interest rate swaps, CDS indices are capable of having a sizeable market impact, as they did during the 2008 financial crisis. Overall, the CDS marketplace has almost $29 trillion in notional outstanding across both single and multi-name products.[28] CDS on standardized indices accounts for about $10 trillion of the global OTC market in notional dollar amount outstanding.[29] Since March 2009, the ICE Clear Credit and ICE Clear Europe have combined to clear over $30 trillion in gross notional for all CDS.[30] Because of the market shares and market impacts of these swaps, and because these swaps are currently being cleared, the Commission decided to review CDS and interest rate swaps in its initial clearing requirement determinations. The Commission recognizes that while this is an appropriate basis for the initial determinations, swap clearing is likely to evolve and clearing requirement determinations made at later times may be based on a variety of other factors beyond the extent to which the swaps in question are already being cleared.

II. Comments on the Notice of Proposed Rulemaking

The Commission received 29 comments during the 30-day public comment period following publication of the NPRM, and four additional comments after the comment period closed. The Commission considered each of these 33 comments in formulating the final regulations.[31]

The Chairman and Commissioners, as well as Commission staff, participated in numerous meetings with clearinghouses, market participants, trade associations, public interest groups, and other interested parties. In addition, the Commission has consulted with other U.S. financial regulators including: (i) The Securities and Exchange Commission (SEC); (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation (FDIC). Staff from each of these agencies has had the opportunity to provide oral and/or written comments to this adopting release, and the final regulations incorporate elements of the comments provided.

The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.

A. Overview of Comments Received

None of the 33 comments received expressed outright opposition to the Commission's clearing requirement proposal.[32] Indeed, 22 of the comment letters strongly supported the Commission's proposal and urged the Commission to finalize its proposal promptly.[33] These comments also supported the Commission's analysis under the five-factor statutory test, and agreed with the Commission's conclusion that swaps within the four proposed classes of interest rate swaps and the two proposed classes of CDS were appropriate for required clearing.[34] All three DCOs clearing the swaps subject to the final rules expressed strong support for the proposal and agreed with the overall approach taken by the Commission.[35]

However, a number of commenters requested that the Commission make specific modifications to the proposed

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[21] The letter made it clear that DCOs should submit both pre-enactment swaps and swaps for which DCOs have initiated clearing since enactment of the Dodd-Frank Act. Pre-enactment swaps refer to those swaps that DCOs were accepting for clearing as of July 21, 2010, the date of enactment of the Dodd-Frank Act.

[22] As discussed in detail below, IDCH has been purchased by LCH.Clearnet Group.

[23] Other swaps submissions were received from Kansas City Board of Trade (KCBT) and the Natural Gas Exchange (NGX). KCBT and NGX do not accept any CDS or interest rate swaps for clearing.

[24] The Commission will consider all other swaps submitted under § 39.5(b) as soon as possible after this determination is published. These other swaps include certain CDS that were submitted to the Commission after the initial February 2012 submissions discussed above. If the Commission determines that additional swaps should be required to be cleared, such determination likely will be proposed as a new class under § 50.4.

[25] *See, e.g.,* letters from the CME Group (CME), the Futures Industry Association (FIA), the Managed Funds Association (MFA), and Americans for Financial Reform (AFR).

[26] Bank of International Settlements (BIS) data, December 2011, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[27] *Id.;* LCH data.

[28] BIS data, December 2011, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[29] *Id.*

[30] ICE Clear Credit data, as of the April 26, 2012 clearing cycle.

[31] Comment letters received in response to the NPRM may be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1252.*

[32] An unsigned comment submitted on September 4, 2012, questioned the need for additional regulation as a general matter.

[33] *See* letters from Futures Industry Association Principle Traders Group (FIA PTG), Arbor Research and Trading, LLC, R.J. O'Brien & Associates, Svenokur, LLC, Chris Barnard, CRT Capital Group (Robert Gorham), LLC, DRW Trading Group, Javelin, The Swaps and Derivatives Market Association (SDMA), Knight Capital Americas LLC, Bart Sokol (CRT Capital Group), Jefferies & Company, Inc., MarketAxess, Eris Exchange, Coherence Capital Partners LLC, Citadel, Americans for Financial Reform (AFR), D.E. Shaw Group, AllianceBernstein, LCH.Clearnet Group Limited (LCH), CME Group Inc. (CME), and IntercontinentalExchange, Inc. (ICE).

[34] *See, e.g.,* letter from Citadel (reviewing each of the five statutory factors and supporting the Commission's analysis).

[35] CME applauded the Commission's decision to require classes of swaps be cleared rather than take a product-by-product approach. CME also commended the decision not to propose classes of swaps on a DCO-by-DCO basis.

rules,[36] and, in several instances, commenters requested clarification of various points.[37] A number of commenters requested that the Commission delay implementation of the clearing requirement until certain milestones are met.[38] Each of these comments is discussed in detail below.

The Futures Industry Association (FIA) expressed concern about the 30-day comment period providing sufficient time to comment on the proposal, and recommended that the Commission provide a longer comment period for future proposals.[39] The Commission is cognizant of the importance of affording the public sufficient time to comment on important proposals. However, given the CEA's requirement that the Commission make its clearing requirement determinations within 90 days, in most instances, providing a 30-day comment period will be appropriate. In fact, some commenters stressed the importance of completing the determination process in an efficient manner. As R.J. O'Brien noted in its comment letter, implementing the clearing mandate as soon as possible ''will improve the financial industry's credibility and show the rest of the world we are serious about improving the financial safety of our markets.'' Providing for a longer comment period likely would impede the Commission's ability to meet the 90-day statutory deadline for completing the determination process.

Lastly, two commenters encouraged the Commission to issue proposed determinations for energy, agricultural, and equity swaps as soon as possible.[40] As required under the CEA, the Commission will continue to review swap submissions received from DCOs for purposes of the clearing requirement in as timely a manner as possible.

B. Generally Applicable Comments

A number of comments are equally applicable to both the CDS and interest rate swap proposals. While most of these issues are discussed in Section III below, certain threshold comments are addressed at the outset.

i. Submission of Swaps Required To Be Cleared and Failures to Clear

CME sought clarification that market participants do not have to clear those swaps that fall within a class of swaps under § 50.4, but for which no DCO provides clearing or for which the DCO provides clearing to only a limited number of market participants. Other commenters expressed similar concerns about not requiring clearing where no DCO offers customer clearing.[41] Freddie Mac requested clarification regarding the legal status of a swap that is submitted for clearing to a DCO, but fails to clear.

The Commission confirms that if no DCO clears a swap that falls within a class of swaps under § 50.4, then the clearing requirement does not apply to that swap. In essence, it is a two-step process to determine whether the clearing requirement applies to a particular swap. First, a market participant must determine whether its swap falls within one of the classes under § 50.4. Then, if the swap falls within one of the classes, the market participant must determine if any of the eligible DCOs clear that swap. The second step requires market participants to determine if all the product specifications required under the DCO's rules are met. If no eligible DCO will accept the swap for clearing because there is a different product specification, then the swap is not required to be cleared. Market participants need not submit swaps to a DCO if they know that the DCO does not clear that particular swap.[42]

In response to Freddie Mac's request for clarification, if counterparties submit their swap to a DCO for clearing and the swap fails to clear because it contains a term or terms that prevent any eligible DCO from clearing the swap, then the swap is not subject to the Commission's clearing requirement. On the other hand, if the swap fails to clear because one or both of the counterparties have not met the DCO's or their clearing members' credit requirements,[43] then the swap remains subject to the clearing requirement and must be cleared as soon as technologically practicable after the counterparties learn of the credit issue. The Commission notes that section 739 of the Dodd-Frank Act amended section 22(a)(4)(B) of the CEA to provide that, regarding contract enforcement between two eligible counterparties, ''[n]o agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable * * * under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction * * * to be cleared in accordance with section 2(h)(1).'' Accordingly, a swap that fails to clear because of credit issues may not be voided by either eligible counterparty solely for the failure of the swap to be cleared in accordance with section 2(h)(1), but the basis for the failure to clear must be addressed by the counterparties and they must promptly resubmit the swap for clearing.

With regard to clearing that is not available to all market participants, the Commission will not require a swap to be cleared unless clearing is generally available to all types of market participants.[44]

ii. Adequacy of DCO Clearing History and Commission Review

ISDA raised a general issue regarding whether the clearing requirement determination for CDS and interest rate swaps properly differentiates between swaps that a DCO currently clears and those that are not currently cleared by a DCO. ISDA expressed concern about delegating to the Director of the Division of Clearing and Risk the authority to determine whether newly-cleared swaps fall within a previously-established class. ISDA's specific comments and recommendations are discussed, and in part adopted, in Section III below. However, ISDA's general recommendation is that the Commission not impose a clearing requirement until there is ''a further determination that a product has an adequate clearing history to support a finding of operational readiness to clear by DCOs and market participants.'' Specifically, ISDA requests that each product have been actually cleared by a DCO and exhibit

[36] *See, e.g.,* letter from ISDA (requesting changes to the delegation provisions of proposed § 50.6).

[37] *See, e.g.,* letter from The Financial Services Roundtable (FSR) (requesting that the Commission clarify the meaning of ''conditional notional amount'').

[38] *See, e.g.,* letter from ISDA (requesting that no determination take effect until there is ''a further determination that a product has an adequate clearing history to support a finding of operational readiness to clear by DCOs and market participants''), and letter from Vanguard (requesting that the Commission delay mandatory clearing until new rules for segregation of customer funds and swap positions are fully operational and capable of being tested for three months).

[39] FIA specifically mentioned its inability to respond to questions asked in the NPRM with regard to competitiveness, which it viewed as important to the Commission's analysis of competitiveness under one of the five statutory factions. *See* Sections II.D and II.F below.

[40] *See* letters from AFR and Chris Barnard.

[41] *See* Section II.D for a discussion of iTraxx and the availability of client clearing.

[42] The rule text of § 50.2(a) has been modified to clarify this two-step process.

[43] It is the Commission's understanding that clearing failures generally arise under two circumstances: (1) Failure of the swap to meet the product specifications required by the DCO; or (2) a credit issue with one or both of the counterparties to the swap. Generally speaking, identification of a product specification problem can be identified extremely quickly.

[44] *See* Section II.D for a discussion of iTraxx and the availability of client clearing.

non-zero open interest (for both inter-dealer and customer clearing) on each day during a six-month period prior to the effective date of the clearing requirement determination.

In contrast with ISDA's comments, the three DCOs eligible to clear swaps within the classes under proposed § 50.4 praised the Commission for taking the class-based approach rather than a product-by-product approach.[45] In addition, CME and ICE both endorsed the Commission's decision not to limit applicability of the clearing requirement to individual DCOs.

The Commission observes that ISDA's recommendation that each DCO demonstrate non-zero open interest for six months may be inconsistent with section 2(h)(2) of the CEA, which requires each DCO to submit to the Commission all swaps that ''it plans to accept for clearing.'' The use of the phrase ''plans to accept'' indicates that Congress intended for the Commission to review swap submissions prior to a DCO's commencing clearing operations for those swaps. Under these circumstances, the DCO would not be able to demonstrate open interest. In addition, adopting ISDA's suggestion could pose a significant deterrent to competition among DCOs insofar as DCOs seeking to offer swaps for required clearing would have to wait until they attract open interest and retain it for six months before they would be on a level playing field with incumbent DCOs.

The Commission believes that it can address ISDA's concerns about DCO product expansion and risk management through its ongoing supervision and risk surveillance programs.[46] In addition, under § 39.5(a)(1) the Commission can review the presumption of eligibility for any DCO offering new swaps falling into a class that it is already clearing, and under § 39.5(a)(2), the Commission must review the eligibility of any DCO that wishes to clear a swap that is not within a class already being cleared by that DCO.[47] The many benefits of a class-based approach are discussed with regard to both CDS and interest rate swaps below.

iii. Customer Segregation for Swaps

Under section 2(h)(2)(D)(ii)(V) of the CEA, in making a clearing requirement determination, the Commission must take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.[48] Several commenters raised general concerns about customer segregation for cleared swaps.

Vanguard recommended that the Commission should not implement mandatory clearing for any swaps until the Commission's final swap customer segregation rules under the legally segregated, operationally commingled (LSOC) model are fully operational and capable of being tested for at least three months prior to mandatory clearing.

The Securities Industry and Financial Markets Association's Asset Management Group (SIFMA AMG) expressed similar concerns about unresolved issues concerning LSOC rules and the operational readiness of futures commission merchants (FCMs) and DCOs to comply with those rules. SIFMA AMG requested clarification of certain matters related to the LSOC model and requests that the Commission issue new rules to require FCMs to issue reports as frequently as technologically feasible, require DCOs to take all steps necessary to ensure reported information is accurate, and require DCOs to complete margin calculations as frequently as technologically feasible. SIFMA AMG recommended that the Commission implement a three-month testing period for LSOC rule implementation after the Commission and the market have completed their ongoing rule clarification efforts.

Both Vanguard and SIFMA AMG requested that all customer margin, including excess margin above the amount required by the DCO, be protected from fellow-customer risk.

ISDA noted that the commodity broker liquidation provisions under the U.S. bankruptcy code and the Commission's Part 190 regulations have never been applied to a DCO. In addition, ISDA stated that the Orderly Liquidation Authority under Title II of the Dodd-Frank Act has never been applied to any entity. For clearinghouses located in the United Kingdom, ISDA observed that the Commission is relying on legal opinions, noting the lack of practical experience with DCO insolvency in the United Kingdom. In light of the absence of practical experience with DCO insolvency, ISDA recommended that the Commission study the issue with the goal of documenting uncertainties and proposing solutions.

In response to these comments, the Commission observes that the compliance date for LSOC was November 13, 2012. The Commission worked with market participants to ensure that compliance by that date was accomplished[49] For reasons discussed below, the compliance schedule for this first clearing requirement will commence on March 11, 2013.[50] Accordingly, as requested by SIFMA AMG, parties in the first compliance category[51] will have more than 3 months of experience under the LSOC rules prior to required clearing taking effect. Those parties in the second and third categories will have over 6 and 9 months of testing prior to required clearing, respectively.[52] During this time, the Commission will continue to work with market participants to resolve matters that require clarification regarding LSOC.

Moreover, in response to requests for enhanced LSOC protections, the Commission understands that the industry is working toward a February implementation date for DCO rules regarding acceptance of excess collateral. The Commission recognizes

[45] Many other commenters also agreed with this approach. *See, e.g.,* TriOptima and Citadel.

[46] *See* discussion of the Commission's DCO examination and risk surveillance programs in the NPRM, 77 FR at 47173–74.

[47] In its comment letter, Freddie Mac questioned how the Commission would review a proposal from a DCO to clear swaps that are required to be cleared under § 50.4. In addition to its general authority to ensure compliance with the core principles, the Commission has authority to review a DCO's eligibility to clear swaps subject to a clearing requirement at any time under § 39.5(a).

[48] This factor is discussed further in Sections II.D and II.F below.

[49] The Commission notes that under § 22.13 a DCO may, subject to certain conditions contained therein, accept cleared swaps customer collateral in excess of the amount required by the DCO. Acceptance of this excess collateral is entirely at the election of the DCO. Thus, the timing of resolution of any issues that may arise as a result of the optional acceptance of such collateral is separate and apart from the November 13th compliance date for implementation of the regulatory requirements set forth in the Part 22 rules.

[50] *See* Section IV for a complete discussion of compliance dates.

[51] Under the compliance schedule for required clearing, § 50.25, Category 1 Entities are swap dealers, security-based swap dealers, major swap participants, major security-based swap participants, and active funds. This category must come in compliance with the clearing requirement by March 11, 2013.

[52] Category 2 Entities are commodity pools, private funds, and persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature according to section 4(k) of the Bank Holding Company Act, provided that such participants are not third-party subaccounts. Category 2 Entities must comply with the clearing requirement by June 10, 2013, for all swaps entered into on or after that date. Category 3 Entities are all other counterparties not electing an exception for a swap under section 2(h)(7), including third-party subaccounts and ERISA plans. Category 3 Entities must comply with the clearing requirement by September 9, 2013, for all swaps entered into on or after that date.

that this issue is of particular concern to third-party subaccounts that will be required to begin clearing swaps executed on or after September 9, 2013. Given the industry's February goal, the Commission believes that issues regarding the acceptance of excess collateral will be resolved before the beginning of September.

In response to ISDA's request that the Commission conduct a study regarding insolvencies of DCOs and clearing members, the Commission observes that its staff have actively participated in, and taken leading roles in, a number of international efforts related to clearinghouse and clearing member insolvency, including an important cross-border study regarding insolvency regimes.[53] In addition, the Commission and other U.S. authorities, including the FDIC, have been engaged, and continue to engage, in regulatory coordination and cooperation, related to insolvencies under Title II.

C. Credit Default Swaps

i. DCO Submissions

Pursuant to § 39.5, the Commission received filings with respect to CDS cleared by CME, ICE Clear Credit, and ICE Clear Europe, each a registered DCO.[54] The CME and ICE Clear Credit submissions included the CDS that each clears on North American corporate indices, covering various tenors and series.[55] The ICE Clear Europe submission included, among other swaps, the CDS contracts on European corporate indices that they clear, with information on each of the different tenors and series. Each of the submissions contained information relating to the five statutory factors set forth in section 2(h)(2)(D) of the CEA and other information required under § 39.5.

CME, ICE Clear Credit, and ICE Clear Europe provided notice of their § 39.5 swap submissions to their members by posting their submissions on their respective Web sites.[56] The submissions also are published on the Commission's Web site.[57]

Regulation 39.5(b)(3)(viii) also directs a DCO's submission to include a summary of any views on the submission expressed by members. CME's submission did not address this. In their submissions, ICE Clear Credit and ICE Clear Europe stated that neither has solicited nor received any comments to date and will notify the Commission of any such comments. The Commission did not receive any additional feedback from DCOs beyond the information included in comment letters posted on the Commission's Web site.

The CDS cleared by CME, ICE Clear Credit, and ICE Clear Europe that were submitted to the Commission are standardized contracts providing credit protection on an untranched basis, meaning that settlement is not limited to a specific range of losses upon the occurrence of credit events among the reference entities included within an index. Besides single-name CDS, untranched CDS on indices are the only type of CDS being cleared by these DCOs. Other swaps, such as credit index tranches, options, and first- or Nth-to-default baskets on these indices, are not currently cleared.

CME and ICE Clear Credit each clear CDS on indices administered by Markit. The Markit CDX family of indices is the standard North American credit default swap family of indices, with the primary corporate indices being the CDX North American Investment Grade (consisting of 125 investment grade corporate reference entities) (CDX.NA.IG) and the CDX North American High Yield (consisting of 100 high yield corporate reference entities) (CDX.NA.HY). The standard currency for CDS on these indices is the U.S. dollar.

CME offers the CDX.NA.IG at the 3-, 5-, 7- and 10-year tenors for Series 9 and each subsequent series, to the extent that those contracts that have not reached their termination date.[58] CME also offers the CDX.NA.HY at the 5-year tenor for Series 11, and each subsequent series. ICE Clear Credit offers the CDX.NA.IG Series 8, and each subsequent series of that index that is still outstanding, at the 3-, 5-, 7- and 10-year tenors.[59] ICE Clear Credit also offers the CDX.NA.IG. Series 8 to Series 10, at the 7-year tenor. For the high yield index, ICE Clear Credit clears all series from the current series through the CDX.NA.HY Series 9 at the 5-year tenor.[60] Each of these cleared CDX.NA contracts is denominated in U.S. dollars.

ICE Clear Europe made a submission covering the index CDS that it clears. As with CME's and ICE Clear Credit's submissions, the contracts that ICE Clear Europe clears are based on Markit indices with corporate reference entities, though in this case, the entities are based in Europe. ICE Clear Europe clears euro-denominated contracts referencing the three primary indices: iTraxx Europe (covering 125 European investment grade corporate reference entities); the iTraxx Europe Crossover (covering 50 European high yield reference entities); and the iTraxx Europe High Volatility (a 30-entity subset of the European investment grade index).

For the iTraxx Europe and Crossover, ICE Clear Europe clears outstanding contracts in the Series 7 and 8, respectively, through the current series. For the High Volatility index, ICE Clear Europe clears outstanding contracts in the Series 9 through the current series. In terms of tenors, ICE Clear Europe clears the 5-year tenor for all swaps, as well as the 10-year tenor for the iTraxx Europe index.

[53] *See, e.g.,* "Survey of Regimes for the Protection, Distribution, and/or Transfer of Client Assets" (Technical Committee of the International Organization of Securities Commissions, March, 2011); "Consultative Report on the Recovery and Resolution of Financial Market Infrastructures" (Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, July, 2012). Staff are also actively participating in further efforts in these contexts by the International Organization of Securities Commissions and the Resolution Steering Group of the Financial Stability Board.

[54] In the case of CME and ICE Clear Europe, the submissions also included other swaps beyond those in the CDS and interest rate swap categories. These submissions, including a description of the specific swaps covered, are available on the Commission's Web site at: *http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizationProducts.*

[55] The Commission has received subsequent submissions from CME and ICE Clear Credit relating to CDS. In particular, CME submitted a filing with regard to the current series of each of the CDX.NA.IG and CDX.NA.HY (Series 19). ICE Clear Credit made filings with regard to the clearing of the 3-year tenor of the CDX.HY Series 15 and the clearing of the CDX.EM indices. With the exception of the CDX.EM submission, upon which the Commission has not yet begun the determination process, the substance of each of the other submissions was addressed in both the proposed clearing determination and the final clearing determination set forth herein.

[56] Available at *http://www.cmegroup.com/market-regulation/rule-filings.html* and *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_022212.pdf.* ICE Clear Europe did not provide a link to its relevant Web page.

[57] *See http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizationProducts.*

[58] As administrator of these indices, Markit reviews the composition of underlying reference entities in the indices every six months. Once Markit establishes the constituents to be included within the indices, a new series of the respective index is created. The most recent series is identified as the "on-the-run" series, with all older series being identified as "off-the-run." Additionally, each time one of the reference entities within an index suffers a credit event, a new version of an existing series of the index is created. In addition to the series and version variations that may exist on the index, the parties can choose the tenor of the CDS on a given index. While the 5-year tenor is the most common, and therefore most liquid, other standard tenors may include the 1-, 2-, 3-, 7-, and 10-year.

[59] ICE Clear Credit began clearing the 3- and 7-year tenors on the CDX.NA.IG after its initial § 39.5 submission of February 22, 2012.

[60] ICE Clear Credit also made a § 39.5 submission with regard to the 3-year tenor of CDX.NA.HY, Series 15. The Commission is not including this contract within the clearing determination at this time.

Based upon those portions of the CME, ICE Clear Credit, and ICE Clear Europe swap submissions relating to the CDS contracts discussed above, as well as the analysis conducted by the Commission pursuant to § 39.5(b) and set forth below, the Commission has reviewed the following classes of swaps for purposes of the clearing requirement determination.

ii. Identification of CDS Specifications

Under § 39.5, the decision of the Commission to require that a group, category, type, or class of swaps be required to be cleared is informed by a number of factors. As an initial matter, the Commission has looked to the DCOs' submissions with regard to the swaps they currently clear. After analyzing the key attributes of the swaps submitted, the Commission proposed establishing two classes of CDS to be subject to the clearing requirement and, pursuant to this final rulemaking, is finalizing those classes as proposed. The first class is based on the untranched indices covering North American corporate credits, the CDX.NA.IG and the CDX.NA.HY. The second class is based on the untranched indices covering European corporate credits, the iTraxx Europe, the iTraxx Europe Crossover, and the iTraxx Europe High Volatility. Given the different markets that the CDS indices cover, the different standard currencies, and other logistical differences in how the CDS markets and documentation work, the Commission believes this is an appropriate basis for creating these two classes.

The following table sets forth the specific specifications of each class:

TABLE 1

Specification	North American Untranched CDS Indices Class
1. Reference Entities	Corporate.
2. Region	North America.
3. Indices	CDX.NA.IG. CDX.NA.HY.
4. Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y. CDX.NA.HY: 5Y.
5. Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
6. Tranched	No.
Specification	**European Untranched CDS Indices Class**
1. Reference Entities	Corporate.
2. Region	Europe.
3. Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
4. Tenor	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
5. Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
6. Tranched	No.

The Commission believes that indices based on other types of entities would be viewed as a separate class and would be subject to a separate determination by the Commission. For example, given the differences that exist with regard to volumes and risk management of indices based on sovereign issuers, as opposed to corporate issuers, it is likely that such CDS would represent their own class of swaps. Similarly, to the extent indices from other regions were submitted by a DCO, it is likely that the Commission would take the view that they are part of their own class of swaps as well.

The Commission believes it appropriate to define the classes of swaps as untranched CDS contracts referencing Markit's broad-based corporate indices. These corporate indices have the most net notional outstanding, the most trading volumes, and the best available pricing. The risk management frameworks for the corporate index swaps are the most well-established, and have the most available data in terms of CDS spreads and corporate default studies for analysis of the underlying constituents of the indices. Agreements based on these indices also are widely accepted and use standardized terms.[61]

Both of the CDS classes presented herein assume that the relevant CDS agreement will use the standardized terms established by Markit/ISDA with regard to the specific index and be denominated in a currency that is accepted for clearing by DCOs. To the extent that a CDS agreement on an index listed within the classification is not accepted for clearing by any DCO because it uses non-standard terms or is denominated in a currency that makes it ineligible for clearing, that CDS is not subject to the requirement that it be cleared, notwithstanding that the CDS is based on such index.

Also as proposed, this clearing determination is limited to only those series of the referenced indices that are currently being cleared.[62] Further, to the

[61] To the extent other vendors successfully develop similar indices, the Commission would conduct the analysis required by § 39.5, either on its own initiative or based on a DCO submission. If based on that analysis the Commission issued a clearing requirement determination, it is likely that such indices would be considered to be part of an existing class of CDS that are required to be cleared.

[62] As discussed in further detail below, the clearing requirement does not require existing

Continued

extent that any swap on a CDS index is of a tenor such that it is scheduled to terminate prior to July 1, 2013, such a swap is not part of this clearing determination. Given the implementation periods provided for under § 50.25, discussed below in Section IV, the Commission does not want to create a situation where certain market participants will be required to clear a contract based upon their status under the implementation provisions, but other parties will never be required to clear that same contract before its scheduled termination.

Similarly, the classes only include those tenors of contracts which are currently being cleared. AFR commented that both the 1- and 2-year tenors of the CDX.NA.IG should be included in the clearing requirement determination, citing concerns that if market participants shift to these shorter tenors, that shift would undermine a clearing requirement that included only longer tenors. Because no DCO clears the 1- or 2-year tenor of CDX.NA.IG, the Commission has decided to include within today's clearing determination only those tenors of the CDX.NA.IG that were proposed. The Commission will monitor the market's use of shorter tenors. To the extent that the market generates significant volumes of such shorter tenors of CDX.NA.IG, the Commission would expect that one or more DCOs will begin offering those tenors for clearing.

If no DCO were to offer these swaps for clearing, the Commission has the authority to commence a Commission-initiated review under section 2(h)(2)(A)(i) of the CEA to determine whether the swaps should be required to be cleared. Under section 2(h)(4), to the extent that the Commission finds that a particular swap or group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no DCO has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall (i) investigate the relevant facts and circumstances; (ii) issue a public report containing the results of the investigation within 30 days; and (iii) take such actions as the Commissions determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap.

The clearing requirement determination will also cover each new series of these indices that is created every six months. The Commission believes this will provide certainty to the market, as opposed to awaiting a new determination for each new series.[63] Recognizing that there may be changes to indices and their constituents,[64] the Commission will analyze each new series to ensure that the indices should continue to be included within the existing class of swaps subject to a clearing determination. To the extent that the new series raises issues, such as a DCO's ability to risk manage the contracts, the Commission can issue a stay of the clearing requirement for that series under § 39.5(d). No commenter raised any questions regarding new series.

As proposed, the Commission has decided that the classes be limited to untranched CDS on the aforementioned indices. With these untranched CDS, the contract covers the entire index loss distribution of the index, and settlement is not linked to a specified number of defaults. Tranched swaps, first- or ''Nth'' to-default, options, or any other product variations on these indices are excluded from these classes. These other swaps based on the indices, such as tranches, have very different profiles in terms of the § 39.5 analysis. Besides very different notional and trading volumes, the risk management processes and operations may be significantly different. The Commission believes it appropriate to exclude tranched swaps, and other variations on the indices, from the classes of swaps set forth herein. Such swaps, if accepted by DCOs and submitted for Commission review, likely would be viewed as a separate class or as separate classes.

AFR notes that market participants can use tranched CDS on the indices to replicate contracts and portfolios that would otherwise be subject to a clearing requirement. The Commission recognizes this concern and will continue to monitor activity in tranched CDS indices, as well as how the development of risk management processes at DCOs could allow for the clearing of those products. Today's clearing determination does not foreclose the possibility that tranched products may be subject to another clearing determination in the future.

D. Determination Analysis for Credit Default Swaps

Section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a swap submission under section 2(h)(2)(B) is consistent with section 5b(c)(2) of the CEA (DCO core principles). Section 2(h)(2)(D)(ii) of the CEA also requires the Commission to consider five factors in a determination based on swap submission: (1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract; (4) the effect on competition, including appropriate fees and charges applied to clearing; and (5) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.[65]

i. Consistency With Core Principles for Derivatives Clearing Organizations

Section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a submission is consistent with the core principles for DCOs. Each of the DCO submissions relating to CDS provided data to support the Commission's analysis of the five factors under section 2(h)(2)(D) of the CEA. The Commission also was able to call upon independent analysis conducted with regard to the CDS market, as well as its knowledge and reviews of the registered DCOs' operations and risk management processes, covering topics such as product selection criteria, pricing sources, participant eligibility, and other relevant rules. The discussion of all of these factors is set forth below.

swaps in the older series to be cleared. The requirement is prospective, only requiring newly executed swaps in these older series to be cleared.

[63] The timing of announcement of index constituents would make it impossible for the Commission to analyze the index and issue a clearing determination on the roll date, given the timeframes imposed on the Commission by § 39.5.

[64] *See* Financial Times, ''CDS Market—Markit's Weird Selection,'' September 27, 2012, discussing the inclusion of constituents (CIT, Calpine, and Charter Communications) in the latest series of the CDX.NA.HY that do not have actively traded CDS contracts.

[65] ISDA highlighted the possibility that a CDS index subject to a clearing requirement determination could undergo such significant changes to its underlying constituents during its lifecycle that such an index would no longer be considered a broad-based index, subject to the Commission's jurisdiction. The Commission notes that the indices subject to the clearing requirement determinations discussed herein contain a minimum of 30 constituents of equal weighting, limiting the likelihood of such scenario. Nonetheless, in the event of such a scenario, the Commission could review the determination, and if appropriate, stay the determination under § 39.5(d) with regard to the index and/or series so impacted.

The swaps submitted by CME, ICE Clear Credit, and ICE Clear Europe pursuant to § 39.5(b) are currently being cleared by those organizations. As discussed above, the risk management, rules, and operations used by each DCO to clear these swaps are subject to review by the Commission's risk management, legal, and examinations staff on an on-going basis.

Additionally, each of the DCOs has established procedures to review any new swaps it may consider offering for clearing. Before the indices referenced herein were accepted for clearing by any of the DCOs, they were subject to review by the risk management functions of those organizations. Such analysis generally focuses on the DCO's ability to risk manage positions in the prospective swaps and on any specific operational issues that may arise from the clearing of such swaps. In the case of the former, this involves ensuring that adequate pricing data is available, both historically and on a ''going forward'' basis, such that a margining methodology could be established, back-tested, and used on an on-going basis. Operational issues may include analysis of additional contract terms for new swaps that may require different settlement procedures. Each of the contracts submitted by CME, ICE Clear Credit, and ICE Clear Europe and discussed herein has undergone an internal review process by the respective DCO and found to be within their product eligibility standards.

In their submissions, CME and ICE Clear Credit enclosed their risk management procedures. In its submission, ICE Clear Europe references its risk management procedures, which it had previously submitted to the Commission in connection with its application to register as a DCO. As part of its risk management and examination functions, the Commission reviews each DCO's risk management procedures, including its margining methodologies.

ICE Clear Credit uses a multi-factor model to margin the CDX.NA.IG and CDX.NA.HY indices, as well as the single-name CDS it clears. The margining methodology is designed to capture the risk of movements in credit spreads, liquidation costs, jump-to-default risk for those names on which credit protection has been sold, large position concentration risks, interest rate sensitivity, and basis risk associated with offsetting index derived single names and opposite ''outright'' single names. These factors are similarly used by ICE Clear Europe to calculate the margining requirements for their iTraxx swap listings and the underlying single-name constituents.

CME's CDS model also weighs a number of factors to calculate the initial margin for a portfolio of CDS positions. These include macro-economic risk factors, such as movements associated with systematic risk resulting in large shifts in credit spreads across a portfolio, shifts in credit spreads based on tenors, and changes in relative spreads between investment grade and high yield spreads. Additional factors include specific sector risks, the idiosyncratic risk of extreme moves in particular reference entities, and the liquidity risk associated with unwinding the portfolio. In all cases, the methodologies are designed to protect against any 5-day move in the value of the given CDS portfolio, with a 99% confidence level.

In addition to initial margin, each of the DCOs collects variation margin on a daily basis to capture changes in the mark-to-market value of the positions. To do this, the DCOs calculate end-of-day settlement prices using clearing members' price submissions for cleared swaps. Each of the DCOs maintains processes for ensuring the quality of clearing member price submissions, including the ability to compel trades at quoted prices on a random basis and to enforce fines on incomplete or incorrect submissions. ICE Clear Credit and ICE Clear Europe also use Markit services for CDX and iTraxx price submissions. CME uses other third-party data providers for pricing support as necessary on its cleared CDS products.

As part of their rule frameworks, each of these three DCOs also maintains participant eligibility requirements. On April 20, 2012, CME filed its amended rule concerning CDS Clearing Member Obligations and Qualifications (Rule 8H04). Pursuant to the amended rule, published to comply with Commission Regulation 39.12(a)(2), a CDS clearing member would have to maintain at least $50 million of capital. The amended rule would also require a CDS clearing member's minimum capital requirement to be ''scalable'' to the risks it poses. Furthermore, CME already has client clearing available for its CDS index contracts.

Similarly, on March 23, 2012, ICE Clear Credit filed its amended Rule 201(b) to incorporate the $50 million minimum capital requirement for clearing members. ICE Clear Europe has adopted similar rules to comply with § 39.12(a)(2). ICE Clear Credit also has client clearing available for its CDX index contracts.

In addition to the CDS indices discussed above, ICE Clear Credit and ICE Clear Europe offer single-name CDS for clearing.[66] As part of their margining methodology, they are seeking approval to offer portfolio margining for the single-name CDS and the CDS indices co-mingled as a single portfolio.[67] Given that the single-name reference entities will likely also be constituents of a given index within a portfolio, the Commission generally believes that such portfolio margining initiatives are consistent with the sound risk management policies for DCOs that are required under § 39.13(g)(4). Moreover, DCOs such as ICE Clear Credit already use margining methodologies that provide for appropriate portfolio margining treatment with regard to clearing members' proprietary positions.[68] The Commission is committed to working toward establishing similar portfolio margining programs for DCOs clearing customer positions in CDS indices and single-name CDS.[69] Specifically, the Commission anticipates addressing ICE's portfolio margining petitions for CDS in the near term.

Based upon the Commission's on-going reviews of DCOs' risk management frameworks and clearing rules, and its annual examinations of the DCOs, the Commission believes that the submissions of CME, ICE Clear Credit, and ICE Clear Europe are consistent with section 5b(c)(2) of the CEA and the related Commission regulations. In analyzing the CDS products submissions discussed herein, the Commission does not believe that a clearing determination with regard to the specified CDS products would be inconsistent with CME, ICE Clear Credit, or ICE Clear Europe's continued ability to maintain such compliance with the DCO core principles set forth in Part 39 of the Commission's regulations.

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[66] Such single-name CDS are defined as ''security-based swaps'' under section 721(a) of the Dodd-Frank Act.

[67] *See* ICE Clear Credit's petitions to the Commission and SEC, dated October 4, 2011. The petition to the Commission is available at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/iceclearcredit100411public.pdf. See also* ICE Clear Europe's petition available at *http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/icecleareurope4dfrequest.pdf.*

[68] *See* ICE Clear Credit's certification to the Commission, dated as of November 25, 2011. The certification is available at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul112511icecc001.pdf.*

[69] A discussion of comments concerning portfolio margining is included below.

ii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

a. Outstanding Notional Exposures, Trading Liquidity, and Adequate Pricing Data

Section 2(h)(2)(D)(ii)(I) of the CEA requires the Commission to take into account the existence of outstanding notional exposures, trading liquidity, and adequate pricing data.

The most recent BIS study [70] found that, as of December 2011, the size of the overall CDS marketplace exceeded $28.6 trillion in notional amount outstanding. Of that amount, $11.8 trillion was in multi-name CDS agreements. Within this sub-category of CDS, CDS on indices accounted for more than 89% of the total notional amount outstanding, with over $10 trillion in notional outstanding. Overall, CDS on index products account for 37% of all notional amounts of CDS contracts outstanding.

The predominant provider of CDS indices is Markit. Markit offers indices covering corporate and sovereign entities, among others, in the United States, Europe, and Asia. Recent Markit data shows daily transaction volumes of 1,559 transactions using its licensed family of CDX indices, and 1,828 daily transactions in its European iTraxx indices.[71] Further, it shows a rolling month gross notional amount of $745 billion in gross notional amount for the CDX family of indices and €680 billion for the iTraxx family. Nearly all of the CDX contracts and volumes come from indices that are subject to the clearing requirement determination. With regard to the European iTraxx, more than 80% of those daily contract volumes and 84% of the daily gross notional volumes come from the iTraxx investment grade and high yield indices contemplated by the clearing requirement determination.

One point highlighted by this data, however, is the declining trading liquidity in the off-the-run series that can occur. Of the volumes noted by Markit, nearly 60% was in the current on-the-run series, as compared to all other outstanding series combined.[72] The submissions of ICE Clear Credit, ICE Clear Europe, and CME also note the decline in average weekly gross notional amounts and contracts for benchmark tenors for off-the-run indices. The decline however can be more precipitous among older off-the-run indices. While many market factors can contribute to the actual volumes for a specific off-the-run contract, subject to certain exceptions, the trend is generally toward lower volumes.[73]

Set forth below is a table of data taken from DTCC as of November 7, 2012, highlighting the net notional amounts and outstanding CDS index contracts, across all tenors, for each index and series included in this clearing determination.[74]

[70] *See* BIS data, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[71] Based on data published on *www.markit.com* as of September 27, 2012.

[72] The term ''on-the-run'' refers to current series of an index, while older series are referred to ''off-the-run.'' Each six months when a new series is created (or ''rolls'' using market terminology), the new series is considered the ''on-the-run'' index, and all others are considered ''off-the-run.''

[73] The current ''on-the-run'' series tend to have the most liquidity, while the older ''off-the-run'' series tend to have less liquidity, as many investors exit positions in an existing series and enter new positions in the new series when it becomes available (*i.e.,* they ''roll'' their positions to the new series) thereby increasing liquidity in the ''on-the-run'' series.

[74] Data from November 7, 2012, available at *www.dtcc.com.* In 2006, DTCC began providing warehouse services for confirmed CDS trades through its Trade Information Warehouse (TIW). With the commitment of global market participants in 2009 to ensure that all OTC derivatives trades are recorded by a central repository, TIW has become a global repository for all CDS trades. With all major market participants submitting their trades to the TIW, it is estimated that 98% of all CDS trades are included within the warehouse, making it the primary source of CDS transaction data.

Table 2

DTCC DATA - BY CONTRACT AND SERIES

DTCC DATA CONTRACT/SERIES	NET NOTIONAL $ OUTSTANDING	OPEN CONTRACTS	DTCC DATA CONTRACT/SERIES	NET NOTIONAL $ OUTSTANDING	OPEN CONTRACTS
CDX.NA.IG.19	66,726,525,313	4,252	CDX.NA.HY.19	18,711,387,000	3,375
CDX.NA.IG.18	25,242,980,217	3,961	CDX.NA.HY.18	11,541,266,409	3,449
CDX.NA.IG.17	14,206,051,225	1,539	CDX.NA.HY.17	5,210,899,501	1,206
CDX.NA.IG.16	20,827,143,020	1,531	CDX.NA.HY.16	5,455,287,000	705
CDX.NA.IG.15	12,170,776,001	756	CDX.NA.HY.15	9,325,100,909	561
CDX.NA.IG.14	10,198,264,081	588	CDX.NA.HY.14	11,458,175,000	183
CDX.NA.IG.13	6,157,634,760	460	CDX.NA.HY.13	1,437,587,000	95
CDX.NA.IG.12	4,869,179,644	343	CDX.NA.HY.12	1,371,245,731	62
CDX.NA.IG.11	4,190,465,694	297	CDX.NA.HY.11	8,291,604,030	233
CDX.NA.IG.10	5,926,634,799	346			
CDX.NA.IG.9	105,430,399,716	2,067			
CDX.NA.IG.8	17,469,789,333	240			
ITRAXX EUROPE SERIES 18	38,510,438,087	4,588	ITRAXX EUROPE CROSSOVER SERIES 18	10,029,587,719	3,908
ITRAXX EUROPE SERIES 17	25,990,566,144	5,754	ITRAXX EUROPE CROSSOVER SERIES 17	5,412,535,536	4,288
ITRAXX EUROPE SERIES 16	7,653,052,828	2,472	ITRAXX EUROPE CROSSOVER SERIES 16	1,447,868,452	1,005
ITRAXX EUROPE SERIES 15	8,497,672,575	1,685	ITRAXX EUROPE CROSSOVER SERIES 15	2,565,759,387	743
ITRAXX EUROPE SERIES 14	3,591,025,566	1,011	ITRAXX EUROPE CROSSOVER SERIES 14	1,178,421,409	528
ITRAXX EUROPE SERIES 13	4,606,938,470	1,202	ITRAXX EUROPE CROSSOVER SERIES 13	688,838,218	485
ITRAXX EUROPE SERIES 12	5,819,694,487	632	ITRAXX EUROPE CROSSOVER SERIES 12	982,576,569	319
ITRAXX EUROPE SERIES 11	3,377,529,200	427	ITRAXX EUROPE CROSSOVER SERIES 11	967,068,894	153
ITRAXX EUROPE SERIES 10	7,771,594,503	543	ITRAXX EUROPE CROSSOVER SERIES 10	632,592,631	143
ITRAXX EUROPE SERIES 9	73,791,616,614	3,698			
ITRAXX EUROPE SERIES 8	16,035,466,103	751			
ITRAXX EUROPE SERIES 7	14,848,063,469	297			
ITRAXX EUROPE HIVOL SERIES 18	732,900,895	31			
ITRAXX EUROPE HIVOL SERIES 17	432,663,278	50			
ITRAXX EUROPE HIVOL SERIES 16	461,075,069	39			
ITRAXX EUROPE HIVOL SERIES 15	351,245,323	61			
ITRAXX EUROPE HIVOL SERIES 14	1,020,850,710	69			
ITRAXX EUROPE HIVOL SERIES 13	832,944,990	78			
ITRAXX EUROPE HIVOL SERIES 12	1,750,515,674	68			
ITRAXX EUROPE HIVOL SERIES 11	666,174,288	58			
ITRAXX EUROPE HIVOL SERIES 10	1,327,323,849	52			

Notwithstanding the declining volumes that occur when an index is no longer on-the-run, the Commission does not believe that is sufficient reason to exclude the older series from the classes of CDS that are subject to the clearing requirement. As the DTCC data indicates, there are still significant volumes and outstanding notional amounts in each of these series.[75] From the perspective of the DCO, the risk management of the older series of swaps should not provide significant additional challenges. With the significant notional and contract volumes still outstanding according to DTCC, many clearing members already have these positions on their books and are meeting their risk management requirements, even in the face of declining trading volumes. While the volumes may decline, the data included in the submissions indicates that volume still does exist, and parties should be able to trade these CDS indices as necessary. Additionally, as discussed further below, the clearing requirement would apply only to new swaps executed in the off-the-run indices.

Both AFR and ISDA specifically supported the inclusion of ''off-the-run'' CDS indices in the clearing determination. AFR noted that without including those indices, the market might enter into such swaps so as to avoid the clearing requirement. In addition, ISDA expressed concern about the potential negative impact on the relative liquidity between cleared and uncleared CDS swaps should a clearing requirement cease to apply during the lifecycle of the CDS.

Given the contract and notional volumes listed above, there is adequate data available on pricing. The pricing for the CDS on these indices is fairly consistent across clearinghouses. The DCOs generally require a clearing member with open interest in a particular index to provide a price on that index for end-of-day settlement purposes. After applying a process to remove clear outliers, a composite price is calculated using the remaining prices. To ensure the integrity of the submissions, clearing members' prices may be ''actionable,'' meaning that they may form the basis of an actual trade that the member will be forced to enter. DCOs also have compliance programs that may result in fines for clearing members that fail to submit accurate pricing data.

Beyond clearing member submissions, there are a number of third-party vendors that provide pricing services on these swaps. Third-party vendors typically source their data from a broader range of dealers. The data includes both direct contributions as well as feeds to automated trading

[75] The Commission is monitoring volumes in the on-the-run iTraxx Europe HiVol. With the newest roll of the indices occurring on September 20, 2012, this index has yet to show significant volumes in the latest series based on DTCC data. The Commission will continue to monitor these volumes and take action as appropriate.

systems. This data is reviewed for outliers and aggregated for distribution.

b. Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded. The Commission has determined that this factor is satisfied by each of CME, ICE Clear Credit, and ICE Clear Europe.

CME, ICE Clear Credit, and ICE Clear Europe, respectively, currently are clearing the swaps each submitted under § 39.5. They have developed respective rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the contracts on terms that are consistent with the material terms and trading conventions on which the contracts currently are trading. The Commission believes that these are scalable and that CME, ICE Clear Credit, and ICE Clear Europe would be able to risk manage the additional swaps that might be submitted due to the clearing requirement determination.

Following the financial crisis, the major market participants committed in 2009 to the substantial reforms to the OTC derivatives markets.[76] Among the commitments from CDS dealers and buy side participants was to actively engage with central counterparties to broaden the range of cleared swaps and market participants. These changes were in addition to those generated through organizations like ISDA and their protocols standardizing CDS. For broadly traded swaps like the CDS indices, the ultimate impact of these initiatives was operational platforms,[77] rule frameworks, and other infrastructure initiatives that replicated the uncleared market and supported the move of these CDS to a centrally cleared environment. In this way, the CDS clearing services offered by DCOs, including CME, ICE Clear Credit, and ICE Clear Europe, were designed to be cleared in a manner that is consistent with the material terms and trading conventions of a bilateral, uncleared market.

In addition, CME, ICE Clear Credit, and ICE Clear Europe are registered DCOs. To be registered as such, CME, ICE Clear Credit, and ICE Clear Europe have, on an on-going basis, demonstrated to the Commission that they are each in compliance with the DCO core principles set forth in the CEA and Commission regulations, as discussed above. As a general matter, any DCO that does not have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the swaps that are subject to required clearing is not in compliance with the core principles or the Commission regulations promulgating these principles.

Commenters raised issues with regard to the operational capabilities of clearinghouses to manage the clearing of iTraxx for customers. Commenters such as ISDA, FIA, MFA, and D.E. Shaw all highlighted the fact that no registered DCO currently offers customer clearing for iTraxx. Besides the lack of approved customer clearing of the iTraxx indices at any DCO, the commenters noted substantive concerns about the ability of clearinghouses to manage the ''restructuring'' credit event applicable to iTraxx (and certain other CDS indices) in the context of customer clearing. For the CDX.NA.IG and CDX.NA.HY indices, credit events are limited to a ''failure to pay'' or the bankruptcy of the companies included in the index. A credit event results in the removal of the defaulted constitute from the index, with the protection seller settling the amounts owed to the protection buyer with regard to that individual constituent. The standardized terms of the iTraxx, however, also include ''restructuring'' as a credit event. When a restructuring event occurs with regard to an index constituent, the impacted company is removed from the index by the creation of a single-name CDS referencing that entity. The protection buyer and seller have the option to continue that single-name CDS or to settle the contract with regard to the restructured credit.

ISDA, MFA, and FIA note that this process raises issues for DCOs. Specifically highlighted were those situations where a DCO does not, in fact, already offer clearing of the single-name CDS that is subject to the restructuring event. To the extent that the SEC or foreign regulator prohibits the DCO from clearing a particular single-name CDS, a process would need to be developed to address such circumstances. Similarly, the customer account in which the new single-name CDS would be held, in the absence of portfolio margining, would need to be addressed. MFA comments that the approval of portfolio margining petitions would remove much of the complexity of the ''spin-off'' of the single-name CDS from the iTraxx indices. Given the inclusion of the iTraxx within the clearing determination, MFA states that the petitions need to be approved so that the new single-name CDS can be held within the cleared swap account and margined with the iTraxx index CDS. Finally, the commenters believe that DCOs need to demonstrate that their customer clearing platforms are technologically viable and sufficiently tested before a clearing determination with regard to the iTraxx indices is finalized. For these reasons, these commenters believe a delay in the implementation of a clearing requirement for the iTraxx indices would be appropriate until such time as customer clearing platforms have been established, the necessary regulatory approvals have been granted and operational testing has been conducted for an appropriate period of time. In MFA's view the delay should be 60 to 90 days, and in ISDA's view, the testing period should consist of voluntary client clearing for at least 90 days.

On the other hand, ICE supports the Commission's inclusion of iTraxx CDS indices within its clearing requirement determination. ICE states that ICE Clear Europe has already begun the process of pursuing regulatory approval for client clearing of iTraxx, and indicates that ICE Clear Credit will do the same.[78]

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[76] *See* the June 2, 2009 letter to The Honorable William C. Dudley, President of the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf.*

[77] In its comment letter supporting the NPRM, MarketAxess Holdings Inc. (MarketAxess) noted that the electronic trading platform it operates supports the trading of CDX and iTraxx products. MarketAxess stated that it intends to apply for registration as a SEF once the Commission issues related final rules.

[78] ICE Clear Europe's submission, pursuant to Commission Regulation 40.6, amending its rulebook to accommodate client clearing is available on the Commission's Web site at: *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul091312iclreu001.pdf.* ICE Clear Europe is registered as a recognized clearing house with the United Kingdom's Financial Services Authority (U.K. FSA) and requires approval from the U.K. FSA to offer iTraxx clearing to customers. ICE Clear Credit's submission with regard to iTraxx clearing for both proprietary and customer accounts is available on the Commission's Web site at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul092812icc001.pdf.* To the extent that ICE Clear Credit successfully launches iTraxx clearing, it would address ISDA's concern with regard to the Commission issuing a clearing determination for swaps that cannot be cleared at a U.S.-based DCO. It should be noted, however, that the Commission does not believe a DCO clearing a particular swap needs to be based in the U.S. for the Commission to find a swap subject to a clearing determination, to the extent that swap satisfies the factors required

While recognizing that the standard credit events under the iTraxx add some complexity relative to the CDX indices, ICE notes that it has worked with market participants and DTCC to develop industry-wide solutions to the ''restructuring'' event. Further, ICE states that ICE Clear Credit has already implemented applicable parts of this solution with regard to the clearing of the CDX.EM CDS index of emerging market sovereign constituents.[79] ICE claims that any additional processes necessary with regard to clearing iTraxx index CDS are being addressed currently by the industry, and will not present any insurmountable challenges.

Citadel also commented that they did not believe that there were any substantive reasons why the iTraxx index CDS should not be required to be cleared. The ''restructuring'' credit event and the spinning out of a newly cleared single-name CDS do not, in Citadel's view, present any new issues to market participants. Further, because DCOs already offer clearing on the iTraxx on a dealer-to-dealer basis, they have the necessary processes upon which to build out the client clearing platform. Citadel also states that even if the ICE Clear Credit's and ICE Clear Europe's petitions to the SEC for portfolio margining were not approved generally,[80] limited exemptions may be available for the single names associated with the spun-off single name. Citadel does agree with other commenters that to the extent that client clearing cannot be offered with sufficient lead time to allow for proper operational testing, a delay may be appropriate in implementing a clearing requirement for the iTraxx indices. Citadel believes 60 days voluntary customer clearing should be sufficient for such testing.

The Commission believes that the introduction of client clearing must occur before any clearing determination could become effective with regard to the iTraxx indices, or any other CDS indices that the Commission may consider.[81] The Commission agrees with all commenters that subject to resolution of all operational issues surrounding client clearing of the iTraxx indices, specifically the iTraxx Europe, Crossover, and High Volatility, these indices are appropriate for inclusion in a clearing requirement. The Commission is encouraged by the work currently being done by the DCOs, by other regulators, and by the market as a whole, to establish client clearing in the near term. The Commission recognizes that additional time may be necessary to allow for the DCOs to obtain the necessary regulatory approvals and design a workable framework for dealing with the issues presented by the client clearing of the iTraxx indices, before the clearing of this class of indices can be required of market participants.

As part of this clearing requirement determination, the Commission is including the iTraxx class of CDS, as proposed. The Commission believes that the compliance schedule outlined in Section IV below should provide adequate time for market participants to resolve the outstanding issues with regard to client clearing of the iTraxx indices. Under this schedule, the requirement for market participants to begin clearing would commence on March 11, 2013, for swaps entered into on or after that date between Category 1 Entities. Category 2 Entities would be required to clear swaps beginning on June 10, 2013, for swaps entered into on or after that date, and Category 3 Entities would be required to clear swaps beginning on September 9, 2013, for swaps entered into on or after that date. However, if no DCO has begun offering client clearing for iTraxx by February 11, 2013, then compliance with the required clearing of iTraxx will commence sixty days after the date on which iTraxx is first offered for client clearing by an eligible DCO.

If an eligible DCO offers client clearing for iTraxx on or before September 9, 2013, the following phased implementation schedule will apply: Category 1 Entities would be required to clear iTraxx indices entered into on or after the date 60 days after the date on which iTraxx is first offered for client clearing by an eligible DCO; Category 2 Entities would be required to clear iTraxx entered into on or after the date 150 days after the date on which iTraxx is first offered for client clearing by an eligible DCO; and Category 3 Entities would be required to clear iTraxx entered into on or after the date 240 days after the date on which iTraxx is first offered for client clearing by an eligible DCO. There will be no phasing of compliance if an eligible DCO offers client clearing for iTraxx after September 9, 2013. Rather, all three categories of market participants will be expected to come into compliance by 60 days after the date on which iTraxx is first offered for client clearing by an eligible DCO.

c. Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to take into account a clearing requirement's effect on the mitigation of systemic risk, taking into account the size of the market for the contract subject to the clearing requirement and the resources of the DCOs clearing the contract. The Commission agrees with the § 39.5 swap submissions of CME, ICE Clear Credit, and ICE Clear Europe that requiring certain classes of CDS to be cleared would reduce systemic risk in this sector of the swaps market. As CME noted, the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of OTC derivatives market participants and the limited transparency of bilateral, *i.e.,* uncleared, counterparty relationships. According to the Quarterly Report (Second Quarter 2012) on Bank Trading and Derivatives Activities of the Office of the Comptroller of the Currency (OCC Report),[82] CDS index products account for a significant percentage of the notional value of swaps positions held by financial institutions. According to ICE Clear Credit, the CDS indices it offers for clearing are among the most actively traded swaps with the largest pre-clearing outstanding positions, and ICE Clear Credit's clearing members are among the most active market participants. ICE Clear Credit also noted that its clearing members clear a significant portion of their clearing-eligible portfolio.

Clearing the CDS indices subject to this determination will reduce systemic risk in the following ways: mitigating counterparty credit risk because the DCO would become the buyer to every seller of CDS indices subject to this determination and vice-versa; providing counterparties with daily mark-to-market valuations and exchange of

by statute and regulation to be included in the Commission's analysis.

[79] It is not clear, however, the extent to which clearing members are in fact offering customer clearing of the CDX.EM indices cleared by ICE Clear Credit.

[80] It should be noted that the Commission strongly supports the petitions for the portfolio margining of single-name CDS and CDS indices. The Commission believes that all customers should be able to benefit from the reasonable application of portfolio margining, and that the benefits thereof should not just be available to the proprietary positions in the house accounts of clearing members.

[81] The Commission agrees with the comments of MFA that the availability of client clearing should be considered when making clearing determinations. Consequently, DCOs accepting, or planning to accept, swaps for clearing should make client clearing available in compliance with Commission regulations. In the absence of such client clearing, the Commission will delay compliance with required clearing of iTraxx indices.

[82] Available at *http://occ.treas.gov/topics/capital-markets/financial-markets/trading/derivatives/dq212.pdf.*

variation margin pursuant to a risk management framework set by the DCO and reviewed by the Commission's Division of Clearing and Risk; posting initial margin with the DCO in order to cover potential future exposures in the event of a default; achieving multilateral netting, which substantially reduces the number and notional amount of outstanding bilateral positions; reducing swap counterparties' operational burden by consolidating collateral management and cash flows; and eliminating the need for novations or tear-ups because clearing members may offset opposing positions.

As discussed in the NPRM, the DCOs collect substantial amounts of collateral in the form of initial margin and guaranty fund contributions to cover potential losses on CDS portfolios. The methodologies for calculating these amounts are based on covering 5-day price movements on a portfolio with a 99% confidence level for initial margin, and longer liquidation periods and higher confidence levels under "extreme but plausible" conditions in the case of guaranty fund requirements. Beyond these financial resources, the clearinghouses have in place established risk monitoring processes, system safeguards, and default management procedures, which are subject to testing and review, to address potential systemic shocks to the financial markets.

AFR specifically supported the Commission's analysis on the mitigation of systemic risk with regard to the CDS clearing determination.[83] ISDA commented generally that the Commission's analysis of this factor should have addressed the centralization of risk at DCOs as a result of the determinations, and the new capital, collateral, and disclosure requirements that have decreased risk in uncleared swaps.[84] The Commission believes its analysis of other factors did in fact focus on the management of risk at DCOs and their ability to manage the risks associated with the untranched CDS indices included within the determination. In connection with future determinations, the Commission will continue to take those issues raised by ISDA into consideration.

d. Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.[85] Under U.S. Department of Justice guidelines, market power is viewed as the ability "to raise price [including clearing fees and charges], reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives." [86]

In the NPRM, the Commission identified the following putative product and service markets as potentially affected by this clearing determination: a DCO service market encompassing those clearinghouses that currently (or with relative ease in the future could) clear the CDS subject to this determination, and a CDS product market or markets encompassing the CDS that are subject to this determination.[87] Without defining the precise contours of these markets at this time,[88] the Commission recognizes that, depending on the interplay of several factors, this clearing determination potentially could impact competition within the affected markets. Of particular importance to whether any impact is, overall, positive or negative, is: (1) Whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant increase above competitive levels would prove unprofitable because users of the CDS products and DCO clearing services would substitute other products/clearing services co-existing in the same market(s), and (2) the potential for new entry into these markets. The availability of substitute products/clearing services to compete with those encompassed by this determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

The Commission recognized in the NPRM that, depending on the interplay of several factors, the clearing requirement potentially could impact competition within the affected market and discussed various factors that could impact that market.

In response to the Commission's recognition of the fact that currently no DCO clears CDS indices licensed by any provider other than Markit, Markit commented that it did not believe the determination would foreclose or materially impact competition in the CDS products, including licensing. Markit noted that its open licensing policy encourages competition among DCOs, SEFs, market makers, and others. Markit further commented that, given the costs associated with clearing, CDS indices that are not subject to a determination may be at a competitive advantage, including those that may be established by other index providers.

In support of the NPRM, Citadel stated that the clearing requirement will have a strong positive impact on competition in the swap market and the market for clearing services. Citadel noted that central clearing will remove a significant barrier to entry for alternative swap market liquidity providers and will enable smaller entities to compete on more equal terms because central clearing eliminates the consideration of counterparty credit risk from the selection of execution counterparties. Citadel further commented that buy-side market participants will benefit from a wider range of potential execution counterparties and asserted that this increased competition yields benefits to market participants including narrower bid-ask spreads, improved access to best

[83] Other commenters such as Citadel generally agreed with the Commission's analysis of the reduction of systemic risk for both the interest rates and CDS determinations.

[84] *See* Section II.F for further discussion of this comment.

[85] *See* U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines [hereinafter "Horizontal Merger Guidelines"] at § 1 (Aug. 19, 2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf*.

[86] *Id.; see also* U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC), Antitrust Guidelines for Collaborations Among Competitors at § 1.2 (April 2000), available at *http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf* ("The central question is whether the relevant agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement").

[87] Included among these could be a separate product market for CDS indices licensing. AFR stated that this factor should not focus on Markit as an index provider, but rather on clearing entities. For purposes of its consideration of this factor, the Commission believes its analysis appropriately covers competition as it relates to clearinghouses, as well as to other market participants.

[88] The federal antitrust agencies, the DOJ and FTC, use the "hypothetical monopolist test" as a tool for defining antitrust markets for competition analysis purposes. The test "identif[ies] a set of products that are reasonably interchangeable with a product," and thus deemed to reside in the same relevant antitrust product or service market. "[T]he test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') likely would impose at least a small but significant and non-transitory increase in price ('SSNIP') on at least one product in the market." In most cases, a SSNIP of five percent is posited. If consumers would respond to the hypothesized SSNIP by substituting alternatives to a significant degree to render it unprofitable, those alternative products/services are included within the relevant market. This methodological exercise is repeated until it has been determined that consumers have no further interchangeable products/services available to them. Horizontal Merger Guidelines at § 4.1.

execution, and increased market depth and liquidity, all of which facilitate the emergence of an all-to-all market with electronic and/or anonymous execution. Citadel also commented that substitution of the DCO for the bilateral counterparty decouples execution from post-trade processing and settlement.[89] Finally, Citadel commented that the certainty as to when the first clearing requirement will begin gives DCOs and FCMs the confidence to invest in their client clearing offerings, and to compete actively for buy-side business both on the quality and efficiency of their services as well as on price.

While FIA commented that the NPRM included a full discussion of the potential competitive impact of the clearing proposal, as discussed above, FIA indicated that it was unable to conduct the analysis it believes would be necessary to respond to the Commission's questions in the NPRM within the 30-day comment period provided.

In response to FIA's comment, as discussed above, the Commission notes that the 30-day public comment period was necessary for the Commission to adhere to the CEA's 90-day determination process. Moreover, while FIA indicated that it would like more time to conduct further analysis of competitive issues for future determinations, FIA did not identify any specific concerns about the competitiveness issue analysis that could materially change the Commission's determination if such additional information were made available to the Commission. The comments provided by Markit and Citadel are consistent with the NPRM's conclusion that the clearing requirement potentially could impact competition within the affected market, but both commenters go on to assert that such an impact would not be negative. Accordingly, the Commission believes that its consideration of competitiveness as described in the NPRM is sufficient for purposes of finalizing the clearing requirement rule.

e. Legal Certainty in the Event of the Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission proposed this clearing requirement based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, namely the CDS indices subject to this determination, in the event of the insolvency of the relevant DCO (CME, ICE Clear Credit, or ICE Clear Europe) or one or more of the DCO's clearing members.

In the case of a clearing member insolvency at CME or ICE Clear Credit, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and Part 190 of the Commission's regulations would govern the treatment of customer positions.[90] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap, must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and Part 190 of the Commission's regulations, the customer's CDS positions, carried by the insolvent FCM, would be deemed "commodity contracts." [91] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent either CME or ICE Clear Credit from closing out/liquidating such positions.[92] However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the customers' positions in CDS indices subject to this determination.[93] Customer funds would be distributed to swaps customers, including CDS customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and Part 190 would govern the bankruptcy of a DCO, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to ICE Clear Europe, the Commission understands that the default of a clearing member of ICE Clear Europe would be governed by the rules of that DCO. ICE Clear Europe, a DCO based in the United Kingdom, has represented that under English law its rules would supersede English insolvency laws. Under its rules, ICE Clear Europe would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM pursuant to the U.S. Bankruptcy Code and Part 190 of the Commission's regulations. According to ICE Clear Europe's submission, the insolvency of ICE Clear Europe itself would be governed by both English insolvency law and Part 190.

ICE Clear Europe has obtained legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members. In addition, ICE Clear Europe has obtained a legal opinion from U.S. counsel regarding compliance with the protections afforded to FCM customers under New York law.

In response to the NPRM, Citadel commented that it agreed with the Commission's analysis that reasonable certainty exists in the event of an insolvency of a DCO or one or more DCO members. As discussed above, the Commission received three comments related to customer segregation. In essence, Vanguard and SIFMA AMG recommend that the Commission delay implementation of the clearing requirement until three months after the LSOC model is implemented, clarified, and perhaps supplemented with additional rulemaking. ISDA requests that the Commission further study the issue of insolvency for DCOs.

As stated above, the Commission believes that the concerns of Vanguard and SIFMA AMG are largely addressed by the delayed implementation timeframe for this determination. With regard to ISDA's request, as discussed above, the Commission is actively engaging in efforts to study and prepare for potential scenarios involving

[89] The Commission observes that issues regarding the bundling of clearing services and execution are beyond the scope of this rulemaking. *See generally* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, 20154–55 (Apr. 3, 2012) (discussing the application of § 1.71(d)(2)).

[90] The Commission observes that an FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act).

[91] If an FCM is also registered as a broker-dealer, certain issues related to its insolvency proceeding would also be governed by the Securities Investor Protection Act.

[92] *See* 11 U.S.C. 556 ("The contractual right of a commodity broker [which term would include a DCO or FCM] * * * to cause the liquidation, termination or acceleration of a commodity contract * * * shall not be stayed, avoided, or otherwise limited by operation of any provision of [the Bankruptcy Code] or by order of a court in any proceeding under [the Bankruptcy Code].").

[93] *See* 11 U.S.C. 766(h).

clearinghouse and clearing member insolvency.

iii. Conclusions Regarding the Five Statutory Factors and Clearing Requirement Determination

Based on the foregoing discussion and analysis, the Commission has taken into account each of the five factors provided for under section 2(h)(2)(D)(ii) of the CEA. Based on these considerations, and having reviewed the relevant DCOs' submissions for consistency with section 5b(c)(2) of the CEA, the Commission is determining that the two classes of CDS identified in § 50.4(b) are required to be cleared.

E. Interest Rate Swaps

i. Introduction

Interest rate swaps are agreements wherein counterparties agree to exchange payments based on a series of cash flows over a specified period of time typically calculated using two different rates multiplied by a notional amount. The BIS estimated that, as of December 2011, over $500 trillion in notional amount of single currency interest rate swaps were outstanding representing 75% to 80% of the total estimated notional amount of derivatives outstanding.[94] Based on these factors and on the swap submissions received under § 39.5(b), the Commission believes that interest rate swaps represent a substantial portion of the swaps market and warrant consideration by the Commission for required clearing.

The Commission's proposal for interest rate swaps was presented in two parts. The first part, Section II.E of the NPRM, discussed the Commission's rationale for determining how to classify and define the interest rate swaps identified in the DCO submissions (IRS submissions) to be considered for the clearing requirement. The second part, Section II.F, presented the Commission's consideration of the IRS submissions in accordance with section 2(h)(2)(D) of the CEA. This final release follows the same basic two-part structure. In each part, the discussion in the NPRM preamble for the corresponding part is summarized. Comments received from the public are summarized where appropriate together with the Commission's consideration of the comments.

ii. DCO Submissions

The Commission received submissions from three registered DCOs eligible to clear interest rate swaps: LCH.Clearnet Limited (LCH), the clearing division of the Chicago Mercantile Exchange Inc. (CME), and International Derivatives Clearinghouse, LLC (IDCH).[95] On August 14, 2012, LCH acquired IDCH and changed the name of IDCH to LCH.Clearnet LLC (LCH.LLC). LCH.LLC has submitted a request to the CFTC for approval of changes to its DCO rules that would result in LCH.LLC clearing the same interest rate swaps that LCH clears. As noted in the NPRM, IDCH had no cleared swap positions. Accordingly, the change in ownership of IDCH would not change the Commission's proposal in terms of swap class assessments or volume and liquidity considerations. The proposed clearing requirement rule is not DCO specific. Upon approval of LCH.LLC's application for its DCO rule changes, LCH.LLC would become a U.S.-domiciled DCO capable of accepting the full range of interest rate swap products contemplated in the proposal.[96]

The following table summarizes the interest rate swap classes and relevant specifications that each DCO identified in its IRS submission.

TABLE 3—INTEREST RATE SWAP SUBMISSIONS SUMMARY [97]

	LCH	CME
Swap Classes	Fixed-to-floating, basis, forward rate agreements (FRAs), overnight index swaps (OIS).	Fixed-to-floating.[98]
Currencies [99]	USD, EUR, GBP, JPY, AUD, CAD, CHF, SEK, CZK, DKK, HKD, HUF, NOK, NZD, PLN, SGD, ZAR.	USD, EUR, GBP, JPY, CAD, and CHF.
Rate Indexes	*For Fixed-to-floating, basis, FRAs:* LIBOR in seven currencies, BBR–BBSW, BA–CDOR, PRIBOR, CIBOR–DKNA13, CIBOR2–DKNA13, EURIBOR-Telerate, EURIBOR-Reuters, HIBOR–HIBOR, HIBOR–HKAB, HIBOR–ISDC, BUBOR-Reuters, NIBOR, BBR–FRA, BBR-Telerate, PLN–WIBOR, PLZ–WIBOR, STIBOR, SOR-Reuters, JIBAR. *For OIS:* FEDFUNDS, SONIA, EONIA, TOIS.	USD–LIBOR, CAD–BA, CHF–LIBOR, GBP–LIBOR, JPY–LIBOR, and EURIBOR.
Maximum Stated Termination Dates.	*For Fixed-to-floating and basis:* USD, EUR, and GBP out to 50 years, AUD, CAD, CHF, SEK and JPY out to 30 years and the remaining nine currencies out to 10 years.. *For OIS and FRAs:* USD, EUR, GBP, and CHF out to two years	USD, EUR, and GBP out to 50 years, and CAD, JPY, and CHF out to 30 years.

iii. Interest Rate Swap Market Conventions and Risk Management

The NPRM described how interest rate swaps present a wide range of variable product classes and product specifications within each class. Notwithstanding the large variety of contracts, there are commonalities that make it possible to categorize interest rate swaps for clearing, pricing, and risk purposes. Firstly, the vast majority of interest rate swaps use the ISDA definitions and contract conventions that allow market participants to agree quickly on common terms for each transaction. In fact, the DCOs clearing interest rate swaps all use ISDA definitions in their product specifications.

Secondly, counterparties enter into swaps to achieve particular economic

[94] BIS, OTC Derivatives Market Activity as of December 2011, Table 1, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.* The BIS data provides the broadest market-wide estimates of interest rate swap activity available to the Commission.

[95] The IRS submissions received by the Commission are available at *http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.* Submission materials marked by the submitting DCO for confidential treatment pursuant to §§ 39.5(b)(5) and 145.9(d) are not available for public review.

[96] IDCH was eligible under § 39.5 to clear interest rate swaps. When LCH.LLC assumed IDCH's DCO license, LCH.LLC was deemed eligible to clear interest rate swaps as well.

[97] LCH.LLC (formerly IDCH) has applied to the Commission for DCO rule change approvals that would effectively implement clearing of the same interest rate swaps that LCH now clears. LCH.LLC is not accepting interest rate swaps for clearing until such time as it launches under its new clearing rules. Accordingly, IDCH's product list that was included in the NPRM has been removed from the summary.

[98] Subsequent to its original submission, CME has added clearing of OIS for USD, EUR, GBP, and JPY.

[99] In this final rule, currencies are identified either by their full name or by the three letter ISO currency designation for the currency.

results. While the results desired may differ in small ways depending on each counterparty's specific circumstances and goals, there are certain common swap conventions that are used to identify and achieve commonly desired economic results when entering into interest rate swaps. For example, a party that is trying to hedge variable interest rate risk may enter into a fixed rate to floating rate swap, or a party that is seeking to fix interest rates for periods in the future may enter into a forward rate agreement.

The IRS submissions identified commonly known classes of swaps that they clear including: fixed rate to floating rate swaps, that are sometimes referred to as plain vanilla swaps (fixed-to-floating swaps); floating rate to floating rate swaps, also referred to as basis swaps (basis swaps); overnight index swaps (OIS); and forward rate agreements (FRAs).[100] These class terms are also being used in industry efforts to develop a taxonomy for interest rate swaps.[101]

Furthermore, within these general classes, certain specifications are essential for defining the economic result and the value of the swap. Each of the IRS submissions naturally used these common specifications when identifying the swaps that the DCO clears. Within each of those specifications, there are common terms used by the DCOs and markets, which allows for further classification of the full range of interest rate swaps that are executed. Accordingly, as described in the NPRM, while there are a wide variety of interest rate swaps when taking into account all possible contract specifications, certain specifications are commonly used by the DCOs and market participants. This allows for the identification of classes of swaps and primary specifications within each class.

The DCOs also risk manage and set margins for interest rate swaps on a portfolio basis rather than on a transaction- or product-specific basis. In other words, the DCOs analyze the cumulative risk of a party's portfolio. By looking at risk on a portfolio basis, the DCOs effectively take into account how swaps with different attributes, such as underlying currency, stated termination dates, underlying floating rate indexes, swap classes, etc., are correlated and thus can offset risk across attributes. This is possible because, although individual transactions may have unique contract terms, given the commonalities of transactions as discussed above, swap portfolios can be risk managed on a cumulative value basis taking into account correlations among the cleared swaps. Consequently, DCOs can be expected to fairly rapidly, and efficiently manage the risk of portfolios of interest rate swaps within and across classes in a default scenario through a small number of large hedging transactions that hedge large numbers of similarly correlated positions held by the defaulting party.[102] As such, liquidity for specific, individual swaps is not the focus of DCOs from a risk management perspective. Rather, liquidity is viewed as a function of whether a portfolio of swaps has common specifications that are determinative of the economics of the swaps in the portfolio such that a DCO can price and risk manage the portfolio through block hedging and auctions in a default situation.[103]

iv. Interest Rate Swap Classification for Clearing Requirement Determinations

Section 2(h)(2)(A) of the CEA provides that the Commission ''shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether'' any thereof shall be required to be cleared. In reviewing the IRS submissions, the Commission considered in the NPRM whether its clearing requirement determination should address individual swaps, or categories, types, classes, or other groups of swaps.

Based on the market conventions as discussed above, and the DCO recommendations in the IRS submissions, the Commission proposed a clearing requirement for four classes of interest rate swaps: Fixed-to-floating swaps, basis swaps, OIS, and FRAs. At the time the IRS submissions were submitted to the Commission, LCH offered all four classes for clearing, as did IDCH, and CME offered one of them for clearing. Subsequent to the publication of the NPRM, CME has added clearing of OIS, and has stated publicly that it intends to add clearing of basis swaps and FRAs in the near future. In addition, upon launch of LCH.LLC, it is expected that LCH.LLC will begin clearing the same swaps cleared by LCH that are included in the swap classes designated by the Commission.

These four classes represent a substantial portion of the interest rate swap market. The following table provides an indication of the outstanding positions in each class.

TABLE 4—INTEREST RATE SWAPS NOTIONAL AND TRADE COUNT BY CLASS [104]

Swap class	Notional amount (USD BNs)	Gross notional percent of total	Total trade count	Total trade count percent of total
Fixed-to-Floating	299,818	60	3,239,092	75
FRA	67,145	13	202,888	5
OIS	43,634	9	109,704	3
Basis	27,593	5	119,683	3
Other [105]	65,689	13	617,637	14

[100] These are sometimes also referred to as ''types,'' ''categories,'' or ''groups.'' For purposes of the clearing requirement determination, the Commission uses the term ''class,'' in order to be consistent with the approach taken by the European Securities and Markets Authority (ESMA) in its Discussion Paper, ''Draft Technical Standards for the Regulation on OTC Derivatives, CCPs, and Trade Repositories,'' (Feb. 16, 2012), available at *http://www.esma.europa.eu/system/files/2012-95.pdf.* It is also noted that other categorizations are sometimes used for certain purposes. However, these four classes are common terms used by the DCOs and are common terms used in industry taxonomies.

[101] *See, e.g.,* ISDA Swap Taxonomies, available at *http://www2.isda.org/identifiers-and-otc-taxonomies/;* Financial Products Markup Language, available at *http://www.fpml.org/;* and Federal Reserve Bank of New York Staff Reports, ''An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting'' (March 2012) at 3, available at *http://www.newyorkfed.org/research/staff_reports/sr557.pdf.*

[102] After putting on these hedging positions, the DCO has the time needed to address any residual risk of the defaulted portfolio through auctioning off the defaulted portfolio together with the hedging transactions.

[103] *See* 77 FR at 47188 and LCH IRS submission, at 4 (discussing LCH's management of the Lehman Brothers' bankruptcy in September 2008, where upon Lehman's default, LCH needed to risk manage a portfolio of approximately 66,000 interest rate swaps, which it hedged with approximately 100 new swap trades in less than five days and only used approximately 35% of the initial margin Lehman had posted).

TABLE 4—INTEREST RATE SWAPS NOTIONAL AND TRADE COUNT BY CLASS [104]—Continued

Swap class	Notional amount (USD BNs)	Gross notional percent of total	Total trade count	Total trade count percent of total
Total	503,879	100	4,289,004	100

[104] TriOptima data, as of March 16, 2012. *See* Section II.F below for a description of the TriOptima data. The TriOptima data provided information on nine other classes of swaps, none of which is included in the IRS submissions.

[105] In the NPRM, the total notional amount for the ''Other'' category was incorrectly listed as $132,162 billion as a result of inadvertently including the FRA amounts in the ''Other'' category. Correcting this error also resulted in changes to the ''Gross Notional Percent of Total'' column. These corrections do not change the Commission's analysis in the NPRM. The fact that the four classes of interest rate swaps included in the clearing requirement represent a larger proportion of the total notional amount of interest rate swaps outstanding is consistent with Congressional intent to mitigate systemic risk by implementing clearing of swaps as discussed in the NPRM. *See* 77 FR 47171.

For purposes of the clearing requirement determination, the Commission developed the following class definitions based on information provided by the submitting DCOs and market conventions.

1. ''Fixed-to-floating swap'': A swap in which the payment or payments owed for one leg of the swap is calculated using a fixed rate and the payment or payments owed for the other leg are calculated using a floating rate.

2. ''Floating-to-floating swap'' or ''basis swap'': A swap in which the payments for both legs are calculated using floating rates.

3. ''Forward Rate Agreement'' or ''FRA'': A swap in which payments are exchanged on a pre-determined date for a single specified period and one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate that is set on a pre-determined date.

4. ''Overnight indexed swap'' or ''OIS'': A swap for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

As described in the NPRM, the LCH and CME IRS submissions addressed issues of classification for purposes of the interest rate swap clearing requirement. In its submission, LCH discussed the classification of interest rate swaps and recommended establishing clearing requirements for classes of interest rate swaps. In effect, LCH recommended the use of a set of basic product specifications to identify and describe each class of swaps subject to the clearing requirement. CME recommended a clearing determination for all non-option interest rate swaps denominated in a currency cleared by any qualified DCO.

As an alternative, the Commission considered whether to establish clearing requirements on a product-by-product basis. The Commission noted in the NPRM that such a determination would need to identify the multitude of specifications of each product that would be subject to the clearing requirement. In this regard, LCH stated in its IRS submission that the clearing requirement ''would be sub-optimal for the overall market if participants are forced to read pages of rules to decipher whether or not a swap is required to be cleared, or to have to make complex and time consuming decisions at the point of execution.'' [106] A class-based approach would allow market participants to determine quickly as a threshold matter whether they might need to submit a swap to a DCO for clearing by checking initially whether the swap has the basic specifications that define each class subject to the clearing requirement.[107]

A product-by-product designation also would be difficult to administer because the Commission would be required to consider each and every product submitted. On the other hand, designating classes of interest rate swaps for the clearing requirement provides a cost effective, workable method for the Commission to review variations in new swap products that DCOs will submit for clearing determinations on a going forward basis without undertaking a full Commission review of each and every swap to determine if those variations are consistent with the five factors the Commission is directed to consider under section 2(h)(2)(D) of the CEA. For such swaps, as described in greater detail below in Section III.F, the Commission proposed delegating to the Director of the Division of Clearing and Risk, with the consultation of the General Counsel, the authority to confirm whether the swap fits within the identified class and is therefore subject to the clearing requirement.

After consideration of the issues summarized above, the Commission proposed in the NPRM to follow the general approach recommended by LCH and CME of establishing the clearing requirement for classes of interest rate swaps, rather than for individual swap products.

v. Interest Rate Swap Specifications

In the NPRM, after consideration of the appropriateness of classifying interest rate swaps, the Commission analyzed the IRS submissions and proposed to set out the parameters of the four classes of interest rate swaps submitted by using the following affirmative specifications for each class: (i) Currency in which the notional and payment amounts are specified; (ii) rates referenced for each leg of the swap; and (iii) stated termination date of the swap. The Commission further proposed three ''negative'' or ''limiting'' specifications for each class: (i) No optionality (as specified by the DCOs); (ii) no dual currencies; and (iii) no conditional notional amounts.[108]

The Commission proposed the three affirmative specifications because they are fundamental specifications used in the swap market to determine the economic result of a swap transaction. Counterparties enter into swaps to achieve particular economic results. For

[106] LCH IRS submission, at 6.

[107] In addition, as noted by LCH, in its IRS submission, a product-by-product requirement may be evaded more easily because the specifications of a particular swap contract would need to match the specifications of each product subject to a clearing requirement. The clearing requirement could be evaded by adding, deleting, or modifying one or more of the contract's specifications, including minor specifications that have little or no impact on the economics of the swap. By using a class-based approach that allows for ranges of contract specifications established by the DCOs within each class, the Commission is reducing the potential for evasion in accordance with section 2(h)(4)(A) of the CEA, which directs the Commission to prescribe rules necessary to prevent evasion of the clearing requirements.

[108] The term ''conditional notional amount'' refers to notional amounts that can change over the term of a swap based on a condition established by the parties upon execution such that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This term does not include what are commonly referred to as ''amortizing'' or ''roller coaster'' notional amounts for which the notional amount changes over the term of the swap based on a schedule of notional amounts known at the time the swap is executed. Furthermore, it would not include a swap containing early termination events or other terms that could result in an early termination of the swap if a DCO clears the swap with those terms. The Commission discusses this definition and comments received on it below.

example, counterparties may enter into interest rate swaps to hedge an economic risk, to facilitate a purchase, or to take a view on the future direction of an interest rate. The counterparties enter into a swap that they believe will best achieve their desired economic result at a reasonable cost.

As noted in the NPRM, the IRS submissions identified four different classes of swap contracts that are being cleared at this time: fixed-to-floating swaps, basis swaps, OIS, and FRAs. These classes of interest rate swaps reflect industry categorization and allow counterparties to achieve a particular economic result. For example, a fixed-to-floating swap may be used by a counterparty to hedge interest rate risk related to bonds it has issued or which it owns.

All three DCO submitters identified currency as a specification for distinguishing swaps that are subject to clearing. A swap that requires calculation or payment in a currency different than the currency of the related underlying purposes of the swap would introduce currency risk.[109] Thus, the currency designated for the swap is a basic factor in pricing the swap and achieving the economic results of the swap desired by each party.

Furthermore, the swaps listed by all three DCOs in their IRS submissions all identified the interest rates used for each leg of the swap as a basic term that defines the swap. The rates are basic determinants of the economic value of each stream of payments of an interest rate swap.

Finally, the stated termination date, or maturity, of a swap is a basic specification for establishing the value of a swap transaction because interest rate swaps are based on an exchange of payments over a specified period of time ending on the stated termination date. The value of a swap at any one point in time depends in part on the value of each payment stream over the remaining life of the swap. For example, if a party wants to hedge variable interest rate risk for bonds it has issued that mature in ten years, it will generally enter into a swap with a stated termination date that matches the final maturity date of the bonds being hedged.[110] To terminate the swap prior to such date would result in only a partial hedge and to execute a swap with a stated termination date that is later than the final bond maturity date would simply create exposed rate risk during the extended period beyond the final maturity date of the bonds.

As noted above, the Commission also considered in the NPRM whether there are product specifications that the Commission should explicitly exclude from the initial clearing requirement determination. In this regard, the Commission considered swaps with optionality, multiple currency swaps, and swaps with conditional notional amounts. The Commission proposed that these three specifications should be included as so-called ''negative'' or ''limiting'' specifications.

By using the three affirmative specifications and three limiting specifications to further identify the swaps within each class that are subject to the clearing requirement, counterparties contemplating entering into a swap can determine quickly as a threshold matter whether the particular swap may be subject to a clearing requirement. If the swap is in a specified class and has the six specifications, the parties will know that they need to verify whether a DCO will clear that particular swap. This will reduce the burden on swap counterparties related to determining whether a particular swap may be subject to the clearing requirement.

The Commission also considered in the NPRM whether to define classes of swaps on the basis of other product specifications. Other potential specifications are numerous because of the nearly limitless alternative interest rate swaps that are theoretically possible. In the NPRM, the Commission summarized its consideration by breaking down alternative specifications into two general categories: Specifications that are commonly used to address mechanical issues for most swaps, and specifications that are less common and address idiosyncratic issues related to the particular needs of a counterparty. The Commission noted that certain specifications are specifically identified for most swap transactions, but asserted that many such specifications are not, generally speaking, fundamental to determining the economic result the parties are trying to achieve. For example, the day count fraction selected affects calculation periods and therefore the amounts payable for each payment period. The parties, and the DCOs, can make mechanical adjustments to period pricing at the time a swap is cleared based on the day count fraction alternative selected by the parties and the day count fraction does not drive the overall economic result the parties are trying to achieve or substantially differentiate the pricing and risk management of the swap relative to other swaps in the same class and having the same basic class defining specifications.

Furthermore, as noted in the NPRM, DCOs can provide clearing for the standard alternatives of each of these specifications without affecting risk management. Using the same day count fraction example, LCH will accept U.S. dollar-LIBOR trades for clearing with nine alternative day count fractions based on the common day count fractions used in the market.[111] While this specification, and other specifications of this kind, may affect the amounts owed on a swap, they can be accounted for mechanically in the payment amount calculations and do not change the basic substantive economic result the parties want to achieve.

Regarding the latter, idiosyncratic specifications, examples include special representations added to address particular legal issues, unique termination events, special fees, and conditions tied to events specific to the parties. None of the DCOs clear interest rate swaps with terms in the second group. Accordingly, such specifications are not included in the classes of swaps subject to the clearing requirement proposed by this rule, and the Commission considered only the first group of more common specifications that are identified by the submitting DCOs in their product specifications.

In short, the Commission recognizes that these other specifications may have an effect on the economic result to be

[109] For example, parties seeking to hedge interest rate risk in connection with bonds or to invest funds using swaps are more likely to enter into swaps that designate the same currency in which the bonds are payable or that the funds to be invested are held.

[110] Although hedging an economic risk expected to remain outstanding for, say, ten years with a matching ten year swap may generally be the most efficient and precise approach, the Commission recognizes that parties may achieve a similar result by using swaps with different stated termination dates. However, such substitution generally provides a less precise hedge.

[111] Each DCO identifies the standard term or range of terms it will accept for each specification. Accordingly, swap counterparties can review the DCO's product specifications to determine whether a swap will satisfy the DCO's requirements for these specifications. Additionally, CME has developed, and LCH has committed to developing by the time the clearing requirement must be complied with in accordance with the Commission's implementation schedule, product screening mechanisms by which parties can determine whether the DCO will clear a particular swap. As discussed in greater detail throughout this release, if counterparties want to enter into a swap that is in a class subject to required clearing and no DCO will clear the swap because it has other specifications that no DCO will accept, then the parties can still enter into that transaction on an uncleared basis.

achieved with the swap.[112] However, counterparties and DCOs may account for the effects of such specifications with adjustments to other specifications or in the price of the swap. Furthermore, DCOs account for various alternatives or range of alternatives for these terms without impairing risk management. Finally, as described above in more detail, including these specifications in the description of the swaps subject to a clearing requirement could increase the burden on counterparties when checking whether a swap may be subject to required clearing. Accordingly, the Commission has determined not to include other, non-class defining specifications in the swap class definition.

vi. General Comments Received Regarding the Specifications Determination

Numerous commenters expressed support for including the Commission's four interest rate swap classes and six class specifications in the clearing requirement and were of the view that the classes satisfy the five statutory factors the Commission is required to consider for the clearing requirement determination.[113] CME expressed support for the class-based approach in the rulemaking rather than swap-by-swap and stated that the Commission ''struck an appropriate balance for the initial slate of classes subject to the requirement.'' LCH commented that the six swap specifications selected are consistent with its recommendation in its IRS submission and reaffirmed the reasons cited in the NPRM for using these specifications.

Citadel agreed with the Commission's class-based approach rather than a product-by-product based approach. Citadel stated that the class designation approach ''reflects the risk management approach utilized across the industry, and most importantly by DCOs'' to determine margin levels and other safeguards and is therefore the starting point for the approved classes. Citadel further noted that different tenors or series of the same instruments, while displaying different characteristics, can be priced both based on market activity and by reference to more liquid contracts of the same instruments and are risk managed with the same risk management frameworks. Finally, Citadel expressed concern that not including products that otherwise share essential characteristics as swaps that are otherwise required to be cleared and that can be priced with reference to cleared swaps could risk the development of separate markets that avoid the clearing requirement.

AFR noted that the interest rate swap classes selected properly reflect the risk profile of the interest rate swap market and will avoid uncertainty and complexity for the Commission and market participants. AFR also noted that details of product specifications such as slightly different tenors, are largely irrelevant, especially in the interest rate market and stated that any suggestion of a product-by-product approach should be interpreted as a tactic to delay implementation. Furthermore, AFR encouraged the Commission to designate swap classes to include low volume swaps that can be risk managed in ways that high-volume swaps in the class are risk managed. AFR's concern is that if the low-volume swaps are not included, they could be used to avoid the clearing requirement by replicating the swaps that are required to be cleared with the low-volume swaps. Citadel's and AFR's comments are consistent with the Commission's rationale for establishing the four classes of swaps and the six specifications for each class on which the Commission based its consideration of the five factors set forth in section 2(h)(2)(D)(ii) of the CEA. As noted in the NPRM, the Commission is directed under the CEA to make its determination for ''each swap, or any group, category, type, or class of swaps.'' The Commission first needed to establish the classes and class-defining specifications to which would then consider using the five statutory factors.

ISDA commented that the Commission should not use what ISDA characterized as a newly-articulated standard for choosing the swap class-defining specifications based on whether they are ''fundamental to determining the economic result that parties are trying to achieve.'' ISDA expressed concern with what it characterized as a standard that it is not grounded in the five statutory factors of section 2(h)(2)(D)(ii) of the CEA and will fail to discriminate between swaps that may differ in terms of the five factors. Furthermore, in ISDA's view, the fundamental economic result depends on facts and circumstances of each transaction and the parties.

The phrase ''fundamental to determining the economic result that parties are trying to achieve'' used by the Commission in the NPRM does not establish a new standard or replace the statutory five factor determination required by the CEA. Rather, the Commission used this phrase to describe one of several reasons for establishing which product specifications to use in defining each class to which the statutory five factor analysis was then applied. The phrase was used in the context of identifying the primary product specifications the submitting DCOs and the market use to value or price swaps within a class. As described at length in Section II.D of the NPRM, in establishing the swap classes to be considered, the Commission looked at how DCOs grouped the cleared interest rate swaps by certain defining types and specifications, how markets trade and view the products as classes, and how swaps that share certain common specifications can be priced and risk managed together as a class. The Commission's analysis for establishing the classes to be considered was not based on any new standard. Rather, the aforementioned phrase summarizes one element of the Commission's analysis of how to define the classes to be considered under the five factors established in the CEA.

Furthermore, the five factor statutory analysis was separately undertaken for each class. For the reasons stated in defining the classes and class specifications, the Commission believes that the swaps within each class are sufficiently similar to apply the statutory analysis to each class. As noted above, many commenters agreed with this conclusion.

Finally, regarding ISDA's view that the fundamental economic result depends on facts and circumstances of each transaction and the parties, the Commission recognizes that individual swap counterparties may have highly specific economic results they are trying to achieve with a swap and accordingly set the terms of the swap to achieve those specific results. However, the Commission's use of the phrase in the NPRM can be more clearly understood in context. The Commission was addressing whether certain specifications, other than the six specifications used to define each class, should be considered to be class-defining specifications. The Commission noted that certain specifications ''affect the value of the swap in a mechanical way, they are not,

[112] LCH recommended in its submission that floating rate tenor (also known as frequency) also be a class level specification and the Commission acknowledges that floating rate tenor can, in some cases, be a fundamental specification for achieving the economic benefits of an interest rate swap. However, it is the Commission's view that floating rate tenor is more akin to the other non-class specifications in that it is not fundamental to all economic results that may be considered by parties when contemplating a swap and it is a specification for which the DCOs can fairly easily offer all of the standard tenors that parties may consider.

[113] AllianceBernstein, R.J. O'Brien, Citadel, Eris Exchange, CME, FIA, D.E. Shaw, Arbor Research, LCH, Knight Capital, Jefferies, Coherence Capital, CRT Capital, Javelin Capital, SDMA, Chris Barnard, and Svenokur.

generally speaking, fundamental to determining the economic result.'' The Commission provided an example of how other specifications may affect the amounts payable on a swap on each payment date, but when valuing a swap for pricing and risk management purposes, together with other swaps within a class, these other specifications can be accounted for by making price adjustments off a standard price curve and therefore do not change the basic pricing economics of the swap to an extent that would necessitate classifying the swap separately from other swaps defined by the six specifications identified by the Commission.

ISDA further commented that, although an overly intricate set of product specifications would impose burdens on the market, broad class designations impose greater burdens by creating the need for filtering products that a DCO will accept for clearing from the designated class. In ISDA's view, the Commission's statement in the NPRM that DCOs and vendors are ''likely'' to develop screening tools acknowledges the issue, but does not provide a solution. ISDA recommended that limiting clearing to swaps with prior clearing history supplemented by an advance DCO notice process would strike a reasonable balance.

In response, the Commission notes that the identification of the four interest rate swap classes and the parameters for the six specifications within each class provides a fairly detailed and easy to use initial screening mechanism for market participants to determine whether a particular swap needs to be submitted for clearing. If a market participant determines that a swap falls into a class under § 50.4, then the party will need to take reasonable efforts to determine whether any eligible DCO will accept the swap for clearing.[114] The Commission noted in the NPRM that the DCOs or other vendors would likely develop screening tools for this purpose. The Commission further notes that each DCO and its members and the FCMs who clear through the DCO, in effect, already have the capability through their own onboarding processes and transaction affirmation platforms to screen swap transactions nearly instantaneously to determine whether the transactions will be accepted by the DCO. While those systems alone should be able to serve as a screening mechanism sufficient to allow for compliance with the clearing requirement, the Commission encourages the DCOs to create a tool to provide all market participants with the ability to independently screen potential swap transactions quickly and easily. CME commented that it already has a tool to screen particular swaps for eligibility. LCH stated in its comments that while the current information on its Web site is designed for dealer use, LCH is committed to revising the information to be easily understandable by all counterparties.

Furthermore, the Commission does not agree that ISDA's proposal to limit the determination to swaps with prior clearing history would ease the screening process. DCOs, particularly LCH, already have prior clearing history for swaps with tens of thousands of different product specification combinations.[115] Accordingly, even if the Commission adopted such an approach, the result would have the problems that a product-by-product approach would have, as acknowledged by ISDA. Also, the Commission agrees that an appropriate DCO notice framework will facilitate product screening and addresses this comment in Section III below.

In addition, ISDA expressed concern that the discussion of specifications that are not included in the six class-specific specifications identified by the Commission could be read as a directive to abandon such other specifications to the extent they are not included in the swaps DCOs will accept for clearing. ISDA requested confirmation that footnote 97 of the NPRM (revised as footnote 111 in this final release) establishes that if a DCO does not accept a swap because the swap contains terms that the DCO does not clear, then entering into the swap as an uncleared transaction is permissible. ISDA further requested that the Commission state that entering into a swap that is not accepted for clearing does not raise a presumption of evasion.

Similarly, Freddie Mac also expressed concern that the discussion of fundamental specifications and ''mechanical specifications'' may signal the Commission's judgment that parties are required to clear swaps that have sufficiently close substitutes. Freddie Mac requested that the Commission clarify the treatment of swaps that no DCO will clear and that parties may enter into uncleared swaps within a designated class if a DCO will not accept the swap provided that the variation in specifications is for a legitimate business purpose. Freddie Mac noted that section 2(h)(1)(A) of the CEA refers to an obligation to ''submit'' the swap for clearing rather than requiring that a swap must be successfully cleared. Freddie Mac expressed concern that failure to clarify this issue would lead to uncertainty as to the legality of uncleared swaps and that executing swap dealers or other market participants could use that uncertainty to insist on contractual rights to have the option to terminate a swap that fails to clear.

The Commission confirms that the discussion of the class-defining swap specifications and other specifications served only to explain the Commission's differentiation between the class specifications and other specifications market participants use. The Commission is not requiring parties to take affirmative steps to substitute a clearable swap for an unclearable swap within a designated class.[116]

Regarding issues of what constitutes evasion of the clearing requirement when using a close substitute swap that is not cleared by a DCO and ISDA's request regarding a presumption regarding evasion of the clearing requirement, this issue, along with other evasion and abuse issues, are addressed in Section III.G of this release.

With respect to the ''negative specifications,'' AFR commented that some of these specifications, such as dual currency and optionality, are composites of two derivatives including a basic interest rate swap that may be subject to the clearing requirement and that market participants should be required to clear components of such swaps that can be cleared to prevent evasion.

This initial determination is based on the IRS submissions and because none of them include swaps that have the negative specifications, the Commission believes it is beneficial for swap market participants to expressly exclude those specifications so that parties that execute swaps with those specifications will know definitively that they are not subject to the clearing requirement. While the Commission is sensitive to concerns that the clearing requirement could be evaded by adding negative specifications to a swap to make it non-clearable, no data or other information is available at this time to indicate that compound swaps are being used for evasion. If the Commission observes such behavior or otherwise becomes aware that is occurring, it will consider

[114] *See* Section III.B for a discussion of the reasonable efforts standard in this context.

[115] *See, e.g., http://www.swapclear.com/why/* (stating that since 1999, LCH has cleared more than 2.2 million OTC interest rate swaps, $329 trillion notional, and compressed more than $145 trillion (as of September 2012)).

[116] *See* Sections II and III for further discussion of this issue.

taking appropriate action under its authority provided in the CEA.

The FSR requested clarification regarding the conditional notional amount specification. The FSR interpreted footnote 93 of the NPRM (footnote 108 of this adopting release) to mean that interest rate swaps entered into in connection with loans to hedge interest rate risk (the notional amounts of which are tied at all times to the outstanding principal amount of the loan) would not be subject to the clearing requirement if the principal amount of the loan would foreseeably vary over its term in an unscheduled or unpredictable manner.[117] The FSR used the examples of a swap used to hedge a construction loan, where the loan would be drawn over time based on the needs of the construction project, and without a fixed draw schedule, or a swap entered into in connection with a revolving credit agreement or a credit agreement that permits voluntary prepayments. The FSR noted that such adjustment may be implemented through a partial termination event, permitting or requiring the lender/swap provider to reduce the outstanding notional amount of the swap so as to protect both the customer and the lender/swap provider from over-hedging.

In response to the FSR, the Commission clarifies that a ''conditional notional amount'' is a specification included in the swap at the time of execution that provides that the notional amount will change during the stated term of the swap in an unscheduled manner upon the occurrence of defined events or conditions. There are two elements to such a specification: First, the change in notional amount must be triggered by a defined event or condition, and second, the change must not be clearly predictable at the time the swap is executed. Accordingly, the two examples provided by the FSR might be swaps that have a conditional notional amount if the swaps include specifications or terms that provide for a change in notional amount triggered by an event tied to the hedged loan or credit line and the specific timing of that event is not sufficiently foreseeable or predictable when the swap is entered into such that the swap notional amount change could have been scheduled in advance. For example, a swap in which the parties agree that the notional amount will automatically be reduced upon a draw on a related construction loan identified in the swap or a prepayment of a loan identified in the swap would qualify as a swap with a conditional notional amount.

However, the Commission notes that such a specification would not qualify if the reduction in the notional amount is voluntary. In this regard, a voluntary partial or full termination right is not an indication of a conditional notional amount. A party to a cleared swap can affect the same result as exercising a voluntary termination right at any time by entering into an equal and offsetting cleared swap. Clearing eliminates bilateral counterparty credit risk and therefore entering into an offsetting swap that is cleared with any party has the same effect as terminating the original swap. Accordingly, including a voluntary termination right in a swap that otherwise would be clearable and is subject to the clearing requirement serves no economic purpose that would distinguish the swap from other swaps in the class that are required to be cleared.

As noted in the beginning of this Section II.E, the preceding analysis identified the classes of interest rate swaps and specifications within the classes to be considered by the Commission in the clearing requirement determination. In the following section in the NPRM, as summarized in this final release, the Commission took into account the statutory provisions under section 2(h)(2)(D) of the CEA with respect to the four classes of interest rate swaps and, within each class, the six identified product specifications.

F. Proposed Determination Analysis for Interest Rate Swaps

i. Consistency With Core Principles for Derivatives Clearing Organizations

As noted above, section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a swap submission is consistent with the core principles for DCOs in making a clearing determination. As discussed in the NPRM, LCH and CME already clear all swaps identified in their respective IRS submissions and therefore each is subject to the Commission's review and surveillance procedures summarized in the NPRM. Accordingly, LCH and CME already are required to comply with the core principles set forth in section 5b(c)(2) of the CEA with respect to the swaps being considered by the Commission for the clearing requirement. The Commission further described in the NPRM its activities as a regulator to monitor and effect ongoing compliance with the core principles applicable to DCOs including periodic examinations and daily risk surveillance. Further, the Commission stated that the Commission does not believe that subjecting any of the interest rate swaps identified in the IRS submissions to a clearing requirement would alter compliance by the respective DCOs with the core principles.

Based upon the Commission's ongoing reviews of DCOs' risk management frameworks and clearing rules, and its annual examinations of the DCOs, the Commission believes that the submissions of LCH and CME are consistent with section 5b(c)(2) if the CEA and the related Commission regulations. In analyzing the IRS submissions discussed herein, the Commission does not believe that a clearing requirement with regard to the specified interest rate swap classes would be inconsistent with LCH or CME's continued ability to maintain such compliance with the DCO core principles set forth in part 39 of the Commission's regulations.

ii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

Section 2(h)(2)(D)(ii) of the CEA identifies five factors the Commission shall consider in making a clearing requirement determination. The process for submission and review of swaps for a clearing requirement determination is further detailed in § 39.5 of the Commission's regulations. This section summarizes the Commission's consideration the four classes of swaps identified in the preceding section under the statutory five factors in the context of the process established by regulation.

a. Outstanding Notional Exposures, Trading Liquidity, and Adequate Pricing Data

Section 2(h)(2)(D)(ii)(I) of the CEA requires the Commission to take into account the existence of outstanding notional exposures, trading liquidity, and adequate pricing data. In the NPRM, the Commission considered available market data and LCH cleared swap information. Unlike CDS for which substantially all of the trading data has been collected in one place, there is no single data source for notional exposures and trading liquidity for the

[117] In a similar vein, ISDA commented that exclusions from the clearing requirements should be available if a party enters into one swap to hedge another swap and the hedge would no longer be functional if one trade of the pair would be cleared and the other not. Section 2(h)(7) of the CEA is clear with respect to this issue, and provides that only certain non-financial entities may elect not to clear certain swaps that hedge or mitigate commercial risk of the entity. The CEA does not extend this election to financial entities.

entire interest rate swap market.[118] However, the Commission considered several sources of data on the interest rate swap market that collectively provides the information the Commission needs to make a clearing requirement determination. As described in the NPRM, the data sources that the Commission considered include: general estimates published by the Bank for International Settlements (BIS data); market data published weekly by TriOptima (TriOptima data) covering swap trade information submitted voluntarily by 14 large derivatives dealers (G14 Dealers); trade-by-trade data provided voluntarily by the G14 Dealers to the OTC Derivatives Supervisors Group for a three month period between June and August 2010 (ODSG data); and trade-by-trade data for swaps cleared by LCH for the first calendar quarter of 2012 (LCH data).[119]

The NPRM explained in detail that each data source used has a number of limitations that are important to understand when considering the data. The Commission incorporates the discussion of those limitations found in the NPRM into this final release.

For this determination, the Commission only considered the swaps identified in the IRS submissions. Accordingly, where possible, the Commission presented and discussed only the data for swaps identified in the submissions. The analysis of interest rate swap data in the NPRM was presented based on the four swap classes and the class specifications. This information was used by the Commission to determine whether there exists significant outstanding notional amounts, trading liquidity, and pricing data to include each class and specification identified in the IRS submissions.

For purposes of this final release, the Commission is incorporating the data tables in the NPRM by reference and the considerations and conclusions drawn by the Commission following review of the data is summarized below.[120] Readers are encouraged to refer to the NPRM to review the data presented. None of the comments received in response to the NPRM raised issues with the data analyzed in the NPRM.

1. Interest Rate Swap Class

In the NPRM, the Commission considered data relevant to the different interest rate swap classes included in the IRS submissions. The BIS data provided certain big picture information. It indicated that interest rate swaps in total constituted nearly 80% of the derivatives market and interest rate swap notional amounts generally increased for all three kinds of swaps between 2008 and 2011 with total interest rate swap notional amounts reported growing by about 15% during that period. Additionally, all three classes of swaps identified by the BIS data have substantial notional amounts outstanding. As of December 2011, FRAs had about $50.5 trillion outstanding, optional swaps had about $51 trillion outstanding, and other interest rate swaps had about $403 trillion outstanding. Given this information, the Commission concluded that none of the kinds of swaps identified by the BIS should be eliminated from consideration by the Commission for a clearing requirement based on the BIS data alone. However, the BIS data did not provide enough detail to reach further conclusions regarding the swaps identified in the IRS submissions.

The TriOptima data and the ODSG data sets were used to identify notional amounts and trade counts for all four classes of swaps identified in the IRS submissions. Trading liquidity as an indication of how effectively DCOs can risk manage a portfolio of swaps can be evidenced in several ways. The data available for this purpose included total notional amount outstanding, total number of swaps outstanding, and the average number of transactions over a given period of time.

The TriOptima data showed that all four classes have significant outstanding notional amounts with basis swaps being the lowest at about $27.6 trillion and the highest being fixed-to-floating swaps at $288.8 trillion. Total trade counts for each type were also significant with the lowest being 109,704 for OIS and the highest being fixed-to-floating swaps at 3,239,092.

The average number of swap trades per week for each class of swaps was evidenced by the ODSG data. According to the ODSG data set, basis swaps were traded at the lowest frequency compared to the other three classes at 240 times on average each week during the ODSG data period. Because the ODSG data is from the summer of 2010 and gross notional amounts and trading activity in interest rate swaps have both increased generally, the Commission believes that trading activity has likely increased for all classes since the ODSG data was collected.

The LCH data generally confirmed the assessment of market-wide data. There is substantial outstanding notional volumes and trade liquidity for each of the four classes already being cleared at LCH.

LCH cleared the following percentage of each class of swap as reported by TriOptima:[121]

- 75% of the Fixed-to-Floating swaps,
- 41% of FRAs,[122]
- 84% of OIS, and
- 41% of Basis Swaps.

Accordingly, a substantial portion of each class is already being cleared voluntarily.

Swap Class Conclusion

The Commission concluded in the NPRM that the four classes of swaps currently being cleared have significant outstanding notional amounts and trading liquidity. The Commission further noted that a substantial percentage of each of the four classes was already being cleared.

A number of commenters commented that the four interest rate swap classes are cleared in material volumes at this

[118] *See* Bank of England, ''Thoughts on Determining Central Clearing Eligibility of OTC Derivatives,'' Financial Stability Paper No. 14, March 2012, at 11, available at *http://www.bankofengland.co.uk/publications/Documents/fsr/fs_paper14.pdf.*

[119] All DCOs were required to begin providing daily position data to the Commission as of November 8, 2012. CME's available data was considered too limited to provide any indication of the complete interest rate swap market. Because LCH clears a large portion of the swap products it offers clearing for (based on available information, LCH claims to have cleared approximately 50 to 90 percent of the dealer open interest in the different interest rate swap products that it clears), its data provides some indication of the possible notional exposures and liquidity in the products submitted by LCH that the Commission considered. Given the limitations on other available data, the Commission believes it is useful to consider the LCH data along with the market-wide BIS data, ODSG data, and TriOptima data.

[120] The ODSG data has not been updated since 2010. The BIS data that was available when the NPRM was published was from the second half of 2011 and the TriOptima and LCH data used was from the first quarter of 2012. The BIS has not published updated data as of this writing. TriOptima stopped publishing the interest rate swap data in April, 2012. DTCC began collecting similar data at that time and is now provisionally registered by the Commission as a SDR. The Commission has reviewed data from DTCC and LCH and confirmed that the recent data available is consistent with the data used in the NPRM to develop the interest rate swap clearing requirement rule, taking into consideration normal changes in market activity.

[121] Percentages are calculated based on total notional amount cleared by LCH divided by total notional outstanding as reported by TriOptima. The TriOptima data is used because it is the most current data set that provides data broken out according to the classes being cleared.

[122] LCH started clearing FRAs in December 2011 and cleared volumes have increased significantly each month since the start date. As of March 31, 2012, the date for which the data was presented in the NPRM, LCH had a total notional amount outstanding of cleared FRAs of $27.7 trillion. As of October 15, 2012, that amount had increased to $58.6 trillion.

time and expressed support for including the four interest rate swap classes in the clearing requirement designation based on the data available.[123] Citadel agreed with the Commission's conclusion that the data presented in the NPRM demonstrate substantial outstanding notional exposures and a high level of trading liquidity in the relevant classes of swaps. Citadel commented that liquidity, for purposes of the clearing requirement, should be determined on grounds other than trading activity alone. Specifically, market depth can be evidenced by the number of dealers quoting two-way markets in a product, and the notional sizes of the quoted bids and offers, is also a liquidity indicator. Citadel noted that multiple dealers regularly quote two-way markets in the swaps covered by the proposed rule in meaningful sizes through a variety of mediums, including in periods of market stress, and therefore it believes there is ample trading liquidity to support a clearing requirement for the classes designated. For the reasons described above, the Commission reaffirms the aforementioned conclusions provided in the NRPM regarding the classes of interest rate swaps proposed in the NPRM for required clearing.

2. Currency

As discussed above in Section II.E, the currency in which the notional and payment amounts are specified is a primary product specification and all four data sources provide interest rate swap data by currency.

The BIS data addressed seven of the seventeen currencies identified in the submissions individually. All seven currencies had substantial outstanding notional amounts as of December 2011, ranging from nearly $5.4 trillion for the Swiss franc to about $185 trillion in euro. For all currencies, the outstanding notional amounts were higher at the end of the most recent three-year period as compared to the beginning of the period.

The Commission believes that the BIS data supports the conclusion that there exists significant outstanding notional amounts in each currency identified in the BIS data and that there is no indication that notional amounts in those currencies are decreasing at a rate that would warrant elimination of those currencies from consideration for a clearing requirement.

The TriOptima data showed that total outstanding notional amounts as of March 16, 2012, ranged from $400 billion for Czech koruna to over $176 trillion notional amount for euro.[124] While there may be sufficient outstanding notional amounts in all seventeen currencies, the Commission noted in the NPRM that there is a clear demarcation between the four currencies with the highest outstanding notional amounts: euro, U.S. dollar, British pound, and yen, and all other currencies. The four top currencies ranged from about 9% to 36% of the total notional amount of all interest rate swaps outstanding and 11% to 33% of the total number of swap trades. The remaining currencies ranged from about 2% down to 0.1% of the total notional amount traded and 3% down to 0.2% of total number of trades. In fact, the four major currencies accounted for about 93% of the total notional amount outstanding in the TriOptima data set.

The ODSG data provided an indication of trading liquidity in terms of average weekly notional amount traded and number of new trades completed during the period covered by the data set. Of the four major currencies, Japanese yen had the lowest weekly average notional at $323 billion and the British pound had the lowest average number of trades each week at 1,233.

The TriOptima data provided an overall, more current view of trades outstanding, which provides a broader picture of the trading potential for each currency for purposes of DCO risk management. As of March 16, 2012, all but one of the seventeen currencies had outstanding trade counts in excess of 14,000 with the exception being the Danish krone at 6,849. Again, the four highest currencies by trade count: euro, U.S. dollar, British pound, and yen, accounted for about 85% of the total number of trades recorded and outstanding at the time the data was collected.

The LCH data showed that the relative notional amount and number of swaps in each currency cleared is generally correlated with the notional amount and number of swaps of each currency reported by the more general market data sets. As a percentage of the total notional amount outstanding as reported by TriOptima, LCH cleared the following percentages:[125]

- 66% of euro,
- 61% of U.S. dollars,
- 58% of British pounds,
- 59% of Japanese yen, and
- 42% of other currencies.

Of the interest rate swaps identifying U.S. dollars, euro, British pounds or yen as the applicable currency, significantly more than half were already being cleared by LCH. While the level of clearing of other currencies was, on a combined basis reasonably high at 42%, the Commission noted the level is noticeably lower than the percentage of swaps being cleared for the top four currencies.

Currency Specification Conclusion

The Commission concluded in the NPRM that all of the data sets demonstrate the existence of significant outstanding notional amounts and trading liquidity in the seventeen currencies identified in the IRS submissions. However, the Commission noted that swaps using the four currencies with the highest outstanding notional amounts and trade frequency: euro, U.S. dollar, British pound, and yen, account for an outsized portion of both notional amounts outstanding and trading volumes. Furthermore, the Commission noted that these four currencies are already being cleared more than the other currencies generally.

While it is important that this determination include a substantial portion of the interest rate swaps traded to have a substantive, beneficial impact on systemic risk, the Commission also recognized that the final rule is the Commission's first swap clearing requirement determination. As noted in the phased implementation rules for the clearing requirement, the Commission believes that introducing too much required clearing too quickly could unnecessarily increase the burden of the clearing requirement on market participants. In recognition of these considerations, the Commission determined in the NPRM to focus the remainder of this initial clearing requirement determination analysis on swaps referencing the four most heavily traded currencies. The Commission noted that the decision not to include the other thirteen currencies at this time does not limit the Commission's authority to reconsider required clearing of those currencies in the future.

[123] *See* letters from FIA PTG, Arbor Research and Trading, LLC, R.J. O'Brien, Svenokur, LLC, Chris Barnard, CRT Capital Group (Robert Gorham), LLC, DRW Trading Group, Javelin, SDMA, Knight Capital Americas LLC, Bart Sokol (CRT Capital Group), Jefferies & Company, Inc., MarketAxess, Eris Exchange, Coherence Capital Partners LLC, Citadel, AFR, D.E. Shaw Group, AllianceBernstein, LCH, CME, and ICE.

[124] TriOptima data, as of March 16, 2012.

[125] The TriOptima data is used for this calculation because it is the most current data set that provides data broken out according to the classes currently being cleared.

LCH commented that it supports the Commission's decision to initially limit the interest rate swap clearing determination to swaps with USD, EUR, GBP, and JPY as the underlying currency, and recommended that the Commission propose mandatory clearing of swaps in the other 13 currencies identified in the IRS submission after the initial phase of the clearing requirement is well-established. LCH stated that there is ample volume and liquidity in swaps denominated in those currencies to support a clearing requirement determination and that it would be beneficial for the market if the Commission would clarify whether and/or when it plans to make clearing of swaps denominated in other currencies mandatory.

The Commission reaffirms the conclusions in its proposed determination to limit the interest rate swap clearing determination to interest rate swaps with USD, EUR, GBP, and JPY as the underlying currency, at this time. In response to LCH, the Commission reiterates that not including interest rate swaps in the other 13 currencies in this determination in no way forestalls the Commission from initiating a new clearing requirement determination for interest rate swaps in those currencies. The decision not to include them at this time was based on the fact that this is the initial clearing requirement determination and the Commission is mindful that market participants will be undertaking significant activity to implement compliance for the first time. Accordingly, the Commission has effectively delayed consideration of these currencies so that the market will have time to adapt to mandatory clearing of interest rate swaps in the four primary currencies, with the expectation that thereafter, the additional currencies can be added fairly easily. The Commission expects to initiate a clearing determination for interest rate swaps in the 13 currencies at some time in 2013.

3. Floating Rate Index Referenced

The ODSG data and LCH data provided an indication of the rate indices used on a transaction-by-transaction basis. Rate indexes are currency specific. The ODSG data showed minimal activity for the EUR–LIBOR index with about $1 billion of notional amount and five trades made for the three month period in 2010 that the ODSG data covers. EUR–LIBOR does not appear on the LCH data table because, although swaps referencing that index can be cleared at LCH, LCH had no open interest for that index as of March 31, 2012. Given the minimal notional amounts and trade liquidity for the EUR–LIBOR index, the Commission determined in the NPRM not to include EUR–LIBOR under the clearing requirement.

The other rate indexes all showed significant notional amounts and trading liquidity. The rates with the least activity, the U.S. dollar Fedfund index and British pound–LIBOR index, each have over one trillion dollars in notional outstanding already cleared at LCH and $93 billion and $82 billion in notional amount, respectively, were cleared per week on average. In terms of number of trades cleared at LCH, swaps referencing Fedfunds were cleared on average 116 times per week and swaps referencing British pound–LIBOR were cleared 888 times per week on average. All of the other indices cleared have similar or substantially higher numbers of trades and notional amounts cleared.

In the NPRM, the Commission noted that the rate indexes used for over-the-counter interest rate swaps reference not only the generic index, but a reference definition for the index such as the ISDA definition or Reuters definition. While the Commission recognized the importance of these reference definitions for each swap contract, the Commission concluded that such definitions are not relevant for purposes of the clearing requirement determination. Furthermore, if the parties to a swap identify a specific reference definition for an index, they need only confirm whether any eligible DCO accepts that reference definition. If none do, then the swap in question is not accepted for clearing and it is not subject to the clearing requirement.

Rate Index Specification Conclusion

The Commission concluded in the NPRM that with the exception of the EURO–LIBOR index, swaps using all of the rate indexes identified in the IRS submissions have significant outstanding notional amounts and trading liquidity and that significant notional amounts of swaps using these rate indexes are already cleared by DCOs.

The Commission received no comments on the rate index specification determination, and confirming its conclusions regarding the rate index specifications identified in the NPRM.

4. Stated Termination Dates

Stated termination date (sometimes referred to as ''maturities'') data is often presented by aggregating stated termination dates for swaps into specified term periods or ''buckets.'' The IRS submissions showed that the DCOs have been clearing interest rate swaps with final termination dates out to at least ten years for all seventeen currencies noted above and out to 50 years for some classes and currencies.

Stated termination dates can fall on any day of the year. Given this continuum of termination dates, the DCOs have indicated that they manage the cleared swap portfolio risk using a swap curve.[126] Swap curves are also used by market participants to price interest rate swaps. By pricing swaps in this way, the economic results of an interest rate swap can be fairly closely approximated, and therefore hedged, using two or more other swaps with different maturities principally by matching the weighted average duration of those swaps with the duration of the swap being hedged.[127] In the same manner, a large portfolio of interest rate swaps can be hedged fairly closely with a small number of hedging swaps that have the same duration as the entire portfolio or subsets of related swaps within the portfolio. In effect, for DCO risk management purposes, the termination dates of interest rate swaps are assessed based on how they affect the overall duration aspects of the portfolio of swaps cleared.[128] Accordingly, the primary determination with respect to the stated termination date specification is, for each class and currency, at what point, if any, along the continuum of swap maturities does the notional outstanding and trading liquidity become insufficient to structure the swap curve effectively for DCO risk management purposes.

The TriOptima data provided sufficient detail to discern notional amounts and trade counts only for each swap class. The ODSG data provided sufficient detail to discern notional amounts and trade counts only for each currency. The LCH data provided enough detail for both swap class and currency.

The TriOptima data and LCH data summarized in the NPRM showed that for fixed-to-floating swaps and basis swaps, there was significant outstanding notional amounts and number of trades for all maturity buckets being cleared.

[126] The ''swap curve'' is the term generally used by market participants for interest rate swap pricing and is similar to, and is sometimes established, in part, based on, ''yield curves'' used for pricing bonds.

[127] Other factors, such as convexity, may also be taken into account in determining the appropriate hedge ratio between the initial swap and the other swaps used to hedge its exposure.

[128] For further discussion of the use of portfolio risk management by DCOs, see the discussion of interest rate swap market conventions and risk management in Section II.E above.

For FRAs, the TriOptima data showed a steep drop off after two years, although in the two to five year bucket, there is still over $1 trillion dollars of outstanding notional amount and 1,646 trades. The LCH data showed substantial outstanding notional amounts of FRAs out to two years and none thereafter. The IRS submissions provide that the DCOs do not clear FRAs with payment dates beyond three years. Accordingly, the Commission need not consider FRAs with maturities beyond three years until such time as a DCO submits such swaps for clearing.

For OIS, the TriOptima data showed notional amounts for all maturity buckets, but the drop off was steep beyond two years. After ten years, outstanding notional amounts drop below $100 billion for each maturity bucket. The LCH data showed no outstanding notional amounts cleared beyond two years. The IRS submissions provide that the DCOs do not accept for clearing OIS swaps beyond two years. Accordingly, the Commission did not consider OIS swaps beyond two years in this clearing requirement determination.

The ODSG data and LCH data presented in the NPRM showed notional amounts traded for maturity buckets by currency. There were traded and cleared notional amounts for euro, U.S. dollars, and British pounds out to the 30 to 50 year bucket and for yen out to the twenty to thirty year bucket. The LCH data confirms that substantial notional amounts of swaps in euro, U.S. dollars, and British pounds are being cleared out to 50 years and yen out to 30 years.

Stated Termination Date Specification Conclusion

For the classes of swaps considered by the Commission in the NPRM, the TriOptima data showed that there were significant outstanding notional amounts and number of trades out to 50 years for fixed-to-floating swaps and basis swaps, out to 10 years or more for OIS, and out to 2 years for FRAs. With respect to currencies, the ODSG data and LCH data show significant outstanding notional amounts and number of trades in swaps out to 50 years for U.S. dollars, euro, and British pounds and out to 30 years for yen.

Citadel noted that different tenors of the same instruments, while displaying incrementally different characteristics, are priceable both based on market activity and also with reference to more liquid or on-the-run (or, as the case may be, already cleared) transactions of the same instruments, and are risk managed using the same risk management frameworks. Accordingly, swaps within a designated class with incrementally different tenors do not require a new review that would incur excessive delay. For the aforementioned reasons, the Commission confirming its conclusions regarding required clearing for interest rate swaps with the stated termination date specifications as proposed in the NPRM.

5. Adequate Pricing Data

In the NPRM, the Commission took into account the adequacy of the pricing data for the four classes of interest rate swaps. LCH stated in its IRS submission that there is adequate pricing data for risk and default management. It explained that its risk and default management is based on the following factors under normal and stressed conditions:

- Outstanding notional, by maturity bucket and currency;
- Number of participants with live open positions, by maturity bucket and currency;
- Notional throughput of the market, by maturity bucket and currency;
- Size tradable that would not adjust the market price, by maturity bucket;
- Number of potential direct clearing members clearing the products that are part of the mutualized default fund and default management process;
- Interplay between on-the-run and off-the-run contracts; and
- Product messaging components and structure.

LCH carries out a fire drill of its default management procedures and readiness twice a year. According to LCH, the fire drill presents an opportunity to further benchmark market liquidity and behavior and for models and assumptions to be recalibrated based on practitioner input. LCH also tests liquidity assumptions from the outset when developing clearing capabilities for a new product and thereafter, on a daily basis. This testing informs how LCH develops and modifies its risk management framework to provide adequate risk coverage in compliance with the core principles applicable to DCOs. Based on this framework, LCH contends that there is adequate pricing data for the swaps offered for clearing.

CME represented in its IRS submission that its interest rate swap valuations are fully transparent and rely on pricing inputs obtained from wire service feeds. Further, CME uses conventional pricing methodologies, including OIS discounting, to produce its zero coupon curve off of which cleared swaps of all stated termination dates are priced. In addition, customers are provided with direct access to daily reports showing curve inputs, daily discount factors, and valuations for each cleared swap position.

It is also worth noting that those interest rate swaps that are the subject of this proposal are capable of being priced off of deep and liquid debt markets. Because of the stability of access to pricing data from these markets, the pricing data for non-exotic interest rate swaps that are currently being cleared is generally viewed as non-controversial.

In response to the NPRM, Citadel commented that its experience regarding trading liquidity further lead it to conclude that there is sufficient data in the market for DCOs to perform required pricing and risk management of the classes of swaps included in the proposed rule. Finally, Citadel commented that access to reliable pricing data will only improve over time as the Dodd-Frank rules promoting transparency are implemented. No other comments were received on this factor.

Based on consideration of the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data, as described in the NPRM, the Commission is reaffirming in this release its decision to include interest rate swaps with the following specifications in the clearing requirement rule and to consider the other four factors identified in section 2(h)(2)(D) of the CEA with respect to these swaps.

TABLE 5—INTEREST RATE SWAP DETERMINATION

Specification	Fixed-to-floating swap class			
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.

TABLE 5—INTEREST RATE SWAP DETERMINATION—Continued

6. Conditional Notional Amounts	No	No	No	No.
Specification	Basis Swap Class			
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Specification	Forward Rate Agreement Class			
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Specification	Overnight Index Swap Class			
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP).	
2. Floating Rate Indexes	FedFunds	EONIA	SONIA.	
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 2 years.	
4. Optionality	No	No	No.	
5. Dual Currencies	No	No	No.	
6. Conditional Notional Amounts	No	No	No.	

b. Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the proposed classes of swaps on terms that are consistent with the material terms and trading conventions on which they are now traded. The Commission stated in the NPRM that it believed that LCH and CME,[129] have developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear on terms that are consistent with the material terms and trading conventions on which those swaps are being traded. The Commission noted that LCH already clears more than half the global interest rate swaps in the four proposed classes of the clearing requirement and that CME also already cleared the more commonly traded swaps under this clearing requirement proposal. The Commission further notes that CME has recently added, or has stated publicly that it intends to add by the end of 2012, swaps in all four classes and at least the four currencies included in the final rule.

The Commission also noted that the DCOs each developed their interest rate swap clearing offerings in conjunction with market participants and in response to the specific needs of the marketplace. In this manner, the clearing services of each DCO are designed to be consistent with the material terms and trading conventions of a bilateral, uncleared market.

LCH submitted that it has the capability and expertise to manage the risks inherent in the current book of interest rate swaps cleared and the increased volume that the clearing requirement could generate for all of its currently clearable products. LCH has developed operational models, controls, and risk algorithms to ensure that it can process trades, and is capable of calculating the level of risk it has with any counterparty—both direct clearing members and their customers.

CME's IRS submission cited to its rule books to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear qualified, interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are then traded.

After considering the information provided by the DCOs in the IRS submissions and the nature and extent of clearing already undertaken by the DCOs of existing bilateral swaps, the Commission concluded in the NPRM that there is available rule framework, capacity, operations expertise and resources, and credit support infrastructure consistent with the material terms and trading conventions on which the swaps included in the four interest rate swap classes are designated.

Citadel commented that the fact that all swaps included in the four interest rate swap classes are being cleared in material volumes provides clear evidence that there is the rule framework, capacity, operational expertise and resources, and credit support infrastructure necessary to clear each of the swaps that are included in the Commission's determination. Further, Citadel stated that because registered DCOs are required to be in compliance on an on-going basis with the DCO core principles in the CEA, they ''by definition'' have demonstrated that they satisfy this factor. In addition, Citadel noted that the DCOs have been preparing for and anticipating increased volumes as a result of the clearing requirement since the enactment of the Dodd-Frank Act, if not earlier. Also, under the Commission's implementation rule,[130] there is a 270-

[129] IDCH was also included in this discussion in the NPRM. However, as discussed above, IDCH has been acquired by LCH and is now LCH.LLC and its rules and product offering are being revised to be substantially the same as LCH's. Accordingly, the rule frameworks, capacity, operational expertise and resources, and credit support infrastructure for IDCH is not discussed in this final release, but is being assessed by the Commission as part of LCH.LLC's request for approval of its rulebook and risk management framework revisions.

[130] 77 FR at 44441–44456.

day period provided to allow DCOs, customers, FCMs, and all others engaged in the clearing process to test and ramp up customer clearing volumes voluntarily, and be in position to manage full production clearing volumes during the phase-in of the clearing requirement. Citadel stated that it believed the DCOs and FCMs are well prepared for a surge in clearing volumes and have the framework, capacity, expertise, resources and infrastructure to support it in a safe and sound manner and that Citadel's own experience in commencing voluntary clearing of swaps confirms its observations.

For the reasons described above, and as discussed in the NPRM, the Commission reaffirms that there is available rule framework, capacity, operations expertise and resources, and credit support infrastructure consistent with the material terms and trading conventions on which the swaps included in the four interest rate swap classes are designated.

c. Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to consider the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. CME, LCH, and IDCH stated in their IRS submissions that subjecting interest rate swaps to central clearing would help mitigate systemic risk. As stated above in the analysis of interest rate swap market data, the Commission believes that the market for these swaps is significant and mitigating counterparty risk through clearing likely would reduce systemic risk in the swap market and the financial system as a whole.

According to LCH's IRS submission, if all clearable swaps are required to be cleared, the inevitable result will be a less disparate marketplace from a systemic risk perspective. CME submits that the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of OTC derivatives market participants and that centralized clearing will reduce systemic risk.

IDCH stated in its IRS submission that, given the tremendous size of the interest rate derivatives market, the potential mitigation of systemic risk through centralized clearing of interest rate swaps is significant. IDCH asserted that clearing such swaps brings the risk mitigation and collateral and operational efficiency afforded to cleared and exchange-traded futures contracts to bilaterally negotiated OTC interest rate derivatives. The submission of interest rate swaps for clearing affords the parties the credit, risk management, capital, and operational benefits of central counterparty clearing of such transactions, and facilitates collateral efficiency. Cleared swaps allow market participants to free up counterparty credit lines that would otherwise be committed to open bilateral contracts. Additionally, according to IDCH, an efficient system for centralized clearing allows parties to mitigate the risk of a bilateral OTC derivative. Instead of holding offsetting positions with different counterparties and being exposed to the risk of each counterparty, a party may enter into an economically offsetting position that is cleared. Although the positions are not offset, the initial margin requirement will be reduced to close to zero. To eliminate risk without using centralized clearing, the party must enter into a tear-up agreement with the counterparty, or enter into a novation.

While the clearing requirement would remove a large portion of the interconnectedness of current OTC markets that leads to systemic risk, the Commission noted in the NPRM that central clearing concentrates risk in a handful of entities. However, the Commission observed that central clearing was developed and designed to handle such concentration of risk. LCH has extensive experience risk managing very large volumes of interest rate swaps. Based on available data, it is believed that about half of all interest rate swaps transacted are cleared by LCH. CME submitted that it has the necessary resources available to clear the swaps that are the subject of its submission. The Commission notes that CME or its predecessors have cleared futures since 1898 and is the largest futures clearinghouse in the world. CME has not defaulted during that time.

Accordingly, the Commission stated in the NPRM, and reaffirms in this release that it believes that LCH and CME have the resources needed to clear the interest rate swaps included in its determination and to manage the risk posed by clearing interest rate swaps that are required to be cleared. In addition, the Commission believes that the central clearing of the interest rate swaps that are the subject of this determination and final rule would serve to mitigate counterparty credit risk thereby having a positive effect on reducing systemic risk.

In support of the Commission's determination regarding systemic risk, Citadel commented that the transition from an interconnected network of bilateral derivatives exposures to central clearing in regulated clearing houses will mitigate systemic risk. In support of this assertion, Citadel cited a New York Federal Reserve Board staff paper [131] and noted that central clearing stands as a pillar of the Dodd-Frank Act. Citadel explained that central clearing eliminates the prospect of firms becoming too interconnected to fail by virtue of their bilateral swap positions and ensures that sufficient margin is reserved against each side of each swap, while further mitigating any default event through mutualization funds, clearing member obligations, and the additional financial safeguards of the regulated DCO.

Citadel further asserted that the Commission's determination takes the decisive step, long anticipated and prepared for by the market, of making mandatory central clearing of the most liquid and standardized swaps a reality. Citadel went on to express confidence that the transition to required clearing of liquid swaps will support and incentivize the expansion of the cleared product set, because it will be more economically efficient for market participants to hold as much of their portfolios as possible in a single margined basket at a DCO. Citadel concluded that the Commission's clearing requirement rule thus provides the certainty needed for market participants to transition more of their swap portfolios from bilateral to cleared trades, thereby reducing or eliminating bilateral counterparty credit risk, and by extension, systemic risk.

By contrast, ISDA commented on how mandatory clearing may centralize risk in DCOs and questioned the risk-mitigating aspects of central clearing as contrasted with the new regulatory regime for uncleared swaps. ISDA also questioned the Commission's assertion that central clearing was designed to address the concentration of risk. In response to ISDA's comment, the Commission observes that while the regime for bilateral, uncleared swaps will be greatly improved after full implementation of the Dodd-Frank Act reforms, central clearing provides for certain risk management features that cannot be replicated on a bilateral basis. To name just one critical distinction, a clearinghouse addresses the tail risk of open positions through mutualization. Each clearing member must contribute to a default fund that protects the system as a whole.

[131] *See, e.g.,* Policy Perspectives on OTC Derivatives Market Infrastructure by Duffie, Li, and Lubke (March 2010), available at *http://www.newyorkfed.org/research/staff_reports/sr424.pdf.*

d. Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether the determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power. Market power is viewed as the ability to raise price, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.[132]

In the NPRM, the Commission identified one putative service market as potentially affected by this proposed clearing determination: a DCO service market encompassing those clearinghouses that currently (or with relative ease in the future could) clear the interest rate swaps subject to this proposal. The Commission recognized that, depending on the interplay of several factors, the clearing requirement potentially could impact competition within the affected market and discussed various factors that could impact that market.

As discussed above, in support of the NPRM, Citadel stated that the clearing requirement will have a strong positive impact on competition in the swap market and the market for clearing services. Citadel noted that central clearing will remove a significant barrier to entry for alternative swap market liquidity providers and will enable smaller entities to compete on more equal terms because central clearing eliminates the consideration of counterparty credit risk from the selection of execution counterparties. Citadel further commented that buy-side market participants will benefit from a wider range of potential execution counterparties and asserted that this increased competition yields benefits to market participants including narrower bid-ask spreads, improved access to best execution, and increased market depth and liquidity, all of which establish a prerequisite for the emergence of an all-to-all market with electronic and/or anonymous execution. Citadel also commented that substitution of the DCO for the bilateral counterparty decouples execution from post-trade processing and settlement. Finally, Citadel commented that the certainty as to when the first clearing requirement will begin gives DCOs and FCMs the confidence to invest in their client clearing offerings, and to compete actively for buy-side business both on the quality and efficiency of their services as well as on price.

FIA commented that the NPRM included a full discussion of the potential competitive impact of the clearing proposal. However, as discussed above, FIA indicated that it was unable to conduct the analysis it believes would be necessary to respond to the Commission's questions in the NPRM within the 30-day comment period provided.

In response to FIA's comment, the Commission notes that the 30-day public comment period was necessary for the Commission to adhere to the CEA's 90-day determination process. Moreover, while FIA indicated that it would like more time to conduct further analysis of competitive issues for future determinations, FIA did not identify any specific concerns about the competitiveness issue analysis that could materially change the Commission's determination if such additional information were made available to the Commission. The comments provided by Citadel are consistent with the NPRM's conclusion that the clearing requirement potentially could impact competition within the affected market, but go on to assert that such an impact would not be negative. Accordingly, the Commission believes that its consideration of competitiveness as described in the NPRM is sufficient for purposes of finalizing the clearing requirement rule.

e. Legal Certainty in the Event of the Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission's proposal was based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, namely the interest rate swaps subject to the proposal, in the event of the insolvency of the relevant DCO or one or more of the DCO's clearing members.

In the case of a clearing member insolvency at CME or IDCH (now, LCH.LLC), *i.e.,* DCOs subject to the bankruptcy laws of the United States, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and Part 190 of the Commission's regulations would govern the treatment of customer positions.[133] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap, must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and Part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by the insolvent FCM, would be deemed "commodity contracts." [134] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent a United States domiciled DCO from closing out/liquidating such positions.[135] However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the interest rate swaps included in the clearing determination.[136] Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and Part 190 would govern the bankruptcy of a DCO, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that the default of a clearing member of LCH would be governed by the rules of that DCO. LCH, a DCO based in the United Kingdom, has represented that under English law its rules would supersede English insolvency laws. Under its rules, LCH would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM

[132] *See* Section II.D above for a more detailed discussion of these issues.

[133] The Commission observes that an FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act).

[134] If an FCM is also registered as a broker-dealer, certain issues related to its insolvency proceeding would also be governed by the Securities Investor Protection Act.

[135] *See* 11 U.S.C. 556 ("The contractual right of a commodity broker [which term would include a DCO or FCM] * * * to cause the liquidation, termination or acceleration of a commodity contract * * * shall not be stayed, avoided, or otherwise limited by operation of any provision of [the Bankruptcy Code] or by order of a court in any proceeding under [the Bankruptcy Code]").

[136] *See* 11 U.S.C. 766(h).

pursuant to the U.S. Bankruptcy Code and Part 190 of the Commission's regulations. According to LCH's submission, the insolvency of LCH itself would be governed by both English insolvency law and Part 190.

LCH has obtained legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members. In addition, LCH has obtained a legal opinion from U.S. counsel regarding compliance with the protections afforded to FCM customers under New York law.

In response to the NPRM, Citadel commented that it agreed with the Commission's analysis that reasonable certainty exists in the event of an insolvency of a DCO or one or more DCO members. As discussed above, the Commission received three comments related to customer segregation. In essence, Vanguard and SIFMA AMG recommend that the Commission delay implementation of the clearing requirement until three months after the LSOC model is implemented, clarified, and perhaps supplemented with additional rulemaking. ISDA requests that the Commission further study the issue of insolvency for DCOs.

As stated above, the Commission believes that the concerns of Vanguard and SIFMA AMG are largely addressed by the delayed implementation timeframe for this determination. With regard to ISDA's request, as discussed above, the Commission is actively engaging in efforts to study and prepare for potential scenarios involving clearinghouse and clearing member insolvency.

iii. Conclusions Regarding the Five Statutory Factors and Clearing Requirement Determination

In the foregoing discussion and analysis, the Commission has taken into account each of the five factors provided for under section 2(h)(2)(D)(ii) of the CEA for the interest rate swap classes that are the subject of this determination. Based on these considerations, and having reviewed the relevant DCOs' submissions for consistency with section 5b(c)(2) of the CEA, the Commission is determining that the four classes of interest rate swaps identified in § 50.4(a) are required to be cleared.

III. Final Rules

The Commission is adopting the following rules under section 2(h)(2), as well as its authority under sections 5b(c)(2)(L) and 8a(5) of the CEA. In issuing a determination regarding whether a swap or class of swaps is required to be cleared, ''the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.'' [137]

A. Regulation 50.1: Definitions

As proposed, § 50.1 set forth two defined terms: ''business day'' and ''day of execution.'' The definition of business day excluded Saturdays, Sundays, and legal holidays. The definition of ''day of execution'' served as a means of addressing situations where executing counterparties are located in different time zones. It was intended to avoid difficulties associated with end-of-day trading by deeming swaps executed after 4:00 p.m., or on a day other than a business day, to have been executed on the immediately succeeding business day. The Commission recognized that market participants should not be required to maintain back-office operations 24 hours a day or 7 days a week in order to meet the proposed deadline for submitting swaps that are required to be cleared to a DCO. The Commission also was attempting to be sensitive to possible concerns about timeframes that may discourage trade execution late in the day. To account for time-zone issues, the ''day of execution'' was defined to be the calendar day of the party to the swap that ends latest, giving the parties the maximum amount of time to submit their swaps to a DCO while still requiring such submission on a same-day basis.

The Commission received two comments on these definitions. LCH commended the Commission for including flexibility on the timing of swap submission for those swaps executed late in the day, but requested that the Commission clarify that DCOs can continue to accept swaps for clearing late in the day. In response to this request, the Commission confirms that the 4:00 p.m. cut off for same-day submission to a DCO is intended to give market participants flexibility and respond to concerns about counterparties in different time zones. This definition should not be interpreted as a prohibition on late-day submission of swaps to DCOs or as impeding DCO's ability to accept such swaps.

FIA observed an apparent conflict between the proposed definitions of ''business day'' and ''day of execution'' and regulation 23.506(b).[138] As with LCH, FIA's concern focused on the ability of DCOs to expand their business hours. As explained above, the definitions do not proscribe a DCO's ability to set business hours. Accordingly, the Commission is adopting the definitions as proposed.

B. Regulation 50.2: Treatment of Swaps Subject to a Clearing Requirement

As proposed, § 50.2(a) required all persons, other than those who elect the exception in accordance with § 39.6 (now § 50.50),[139] to submit a swap that is part of the class described in § 50.4 for clearing by a DCO as soon as technologically practicable and no later than the end of the day of execution. The objective of this provision was to ensure that swaps subject to a clearing requirement are submitted to DCOs for clearing in a timely manner.

ISDA recommended that the Commission clarify the rule text to recognize that non-clearing members are deemed to have met the requirements of § 50.2 once they submit the swap to their FCM clearing member. ISDA also requested that the Commission recognize that in some cross-border transactions clearing members will not necessarily be FCMs. Similarly, ISDA asked that there be an exclusion for foreign governments and governmental entities as set forth in the end-user exception final rulemaking. Lastly, ISDA asked that there be an exception in the rule for system outages and force majeure events.

In response to ISDA's first comment, the Commission is modifying the rule text by adding new paragraph (c) to clarify that submission of a swap to an FCM or a DCO clearing member is sufficient to meet the timeliness requirements of the rule. For U.S. customers, this will mean submission to a registered FCM. For cross-border transactions, the Commission recognizes that submission of the swap may be to a non-FCM clearing member when the customer is not a U.S. person.[140]

[137] Section 2(h)(2)(D)(iii) of the CEA.

[138] This regulation directs swap dealers and major swap participants to submit swaps subject to the clearing requirement to a DCO as soon as technologically practicable after execution, but no later than the close of business on the day of execution. *See* 17 CFR 23.506(b), 77 FR 21278, 21307 (Apr. 9, 2012). To the extent that a swap dealer or major swap participant is subject to both § 23.506(b) and § 50.2(a), the entity should comply with § 23.506(b) when its counterparty is another swap dealer or major swap participant, but if the swap is between a swap dealer and a non-swap dealer, then the non-swap dealer counterparty can elect to follow the timing requirements of § 50.2(a) or § 23.506(b).

[139] The Commission is recodifying § 39.6 as § 50.50 so that market participants are able to locate all rules related to the clearing requirement in one part of the Code of Federal Regulations.

[140] If the person submitting the swap is a customer, as § 1.3(k) defines that term, then only a

With regard to foreign governments and governmental entities, the Commission reiterates the position taken in the end-user exception rulemaking that ''foreign governments, foreign central banks, and international financial institutions should not be subject to Section 2(h)(1) of the CEA.'' [141] Finally, the Commission declines to include an explicit exception for unforeseen outages and other events. The Commission recognizes that these situations may occur and has adopted rules relating to system safeguards and disaster recovery for market infrastructures [142] and market participants.[143] However, none of the straight-through-processing rules adopted by the Commission included carve-outs for system outages or force majeure events,[144] and the Commission does not believe it is necessary to include such provisions in this rule. In the case of serious market-wide disruptions, the Commission would take this mitigating fact into account in reviewing compliance with § 50.2.

Additionally, in an effort to clarify that a market participant does not have to submit a swap that falls within the § 50.4 classes, but that the entity knows are not offered for clearing by any DCO because the swap contains specifications that are not accepted for clearing, the Commission is modifying the text of § 50.2 to include a reference to ''eligible'' DCOs that offer such swaps for clearing.

Proposed § 50.2(b) would require persons subject to § 50.2(a) to undertake reasonable efforts to determine whether a swap is required to be cleared. In the NPRM, the Commission indicated that it would consider such reasonable efforts to include checking the Commission's Web site or the DCO's Web site for verification of whether a swap is required to be cleared, or consulting third-party service providers for such verification.

CME commented on the Commission's observation in the NPRM that DCOs could design and develop systems that will enable market participants and trading platforms to check whether or not their swap is subject to a clearing requirement and be provided with an answer within seconds (or faster). CME stated that its platform already provides market participants with a tool to screen a particular swap for eligibility for clearing upon submission to CME. The Commission recognizes that this technological capability will be beneficial to market participants, particularly pre-execution, and is necessary to ensure timely clearing of swaps subject to the clearing requirement.

Freddie Mac observed that § 50.2(a) and (b) could be interpreted to require two different standards of care: strict liability for the former and a reasonable inquiry standard for the latter. In response to Freddie Mac's comment, the Commission clarifies that § 50.2(a) establishes a requirement regarding the timely submission of swaps to DCOs. It is a bright-line standard, but it is not intended to introduce a new scienter requirement regarding submission for clearing beyond that provided for in the statute.[145] With regard to § 50.2(b), the Commission's objective was to afford market participants clarity about what efforts they must expend in determining whether their swaps are required to be cleared. In the absence of some central screening mechanism available to all market participants for the purpose of immediately determining whether any eligible DCO offers a particular swap for clearing,[146] the Commission believes it appropriate to provide clarity regarding what constitutes reasonable search or verification efforts.[147]

C. Regulation 50.3: Notice to the Public

The Commission proposed § 50.3(a) to require each DCO to post on its Web site a list of all swaps that it will accept for clearing and clearly indicate which of those swaps the Commission has determined are required to be cleared pursuant to part 50 of the Commission's regulations and section 2(h)(1) of the CEA.

ISDA commented that DCOs should provide swap information, including product specifications, in a manner that is easy to access and use. ISDA also called upon DCOs to provide at least one-month's advance notice for new swaps that they plan to accept for clearing and to provide a description of the margin methodology used in clearing the swap. The Commission agrees that DCOs should provide information in a manner that is easy to use and accessible to the public. Regulation § 50.3(b) builds upon the requirements of § 39.21(c)(1), which requires each DCO to disclose publicly information concerning the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO. The Commission also welcomes ISDA's suggestion that DCOs voluntarily provide advance notice of new swaps that they plan to clear and make relevant information regarding their margining methodologies available.[148]

LCH commented that it is committed to revising the information on its Web site so that it is provided in a format that is easily understandable by all swaps counterparties, including customers.

Regulation § 50.3(b) requires the Commission to post on its Web site a list of those swaps it has determined are required to be cleared and all DCOs that are eligible to clear such classes of swaps. No comments were received on this provision. The Commission is adopting the rule as proposed in order to provide market participants with sufficient notice regarding which swaps are subject to a clearing requirement. For clarification, the Commission will include on its Web site any swaps that it has determined through delegated authority under § 50.6 fall within a class of swaps described in § 50.4.

D. Regulation 50.4: Classes of Swaps Required To Be Cleared

As discussed at length above, proposed § 50.4 set forth the classes of interest rate swaps and CDS that the Commission proposed for required clearing. Proposed § 50.4(a) included a table listing those types of interest rate swaps the Commission would require to be cleared, and proposed § 50.4(b) included a table listing those types of CDS indices the Commission would require to be cleared.

ISDA recommended that the Commission clarify that the stated termination date ranges in § 50.4(a) be applied only at trade inception for purposes of determining whether the swap is required to be cleared. The Commission confirms ISDA's

registered FCM may accept that swap for clearing, even if the customer seeks to clear the swap on a DCO located outside of the U.S.

[141] *See End-User Exception to the Clearing Requirement for Swaps,* 77 FR 42560, 42562 (July 19, 2012).

[142] *See, e.g.,* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69443–69444 (Nov. 8, 2011) (adopting § 39.18 relating to system safeguards).

[143] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20208–20209 (Apr. 3, 2012) (adopting § 23.603 relating to business continuity and disaster recovery).

[144] Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21307 (Apr. 9, 2012).

[145] *See* Section III.G for further discussion regarding scienter.

[146] *See* discussion in Section II.E regarding LCH's and CME's efforts to provide such a screening mechanism.

[147] The Commission notes that it will consider whether verification efforts are reasonable in light of all the facts and circumstances of a market participant's particular situation.

[148] 17 CFR 39.21 requires that DCOs provide market participants with ''sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services'' of the DCO.

understanding of the stated termination date range applying only at trade inception or upon an ownership event change, as discussed in detail below.

As discussed above, the Commission is adopting § 50.4(a) and (b). The Commission believes that this format provides market participants with a clear understanding of which swaps are required to be cleared. By using basic specifications to identify the swaps subject to the clearing requirement, counterparties contemplating entering into a swap can determine quickly as a threshold matter whether or not the particular swap may be subject to a clearing requirement. If the swap has the basic specifications of a class of swaps determined to be subject to a clearing requirement, the parties will know that they need to verify whether an eligible DCO will clear that particular swap. This will reduce the burden on swap counterparties related to determining whether a particular swap may be subject to the clearing requirement.

i. Disentangling Complex Swaps

TriOptima commented that the complete swap must be assessed against the clearing requirement and parties should not be required to disentangle non-clearable swaps in order to clear the clearable components. The Commission confirms TriOptima's view regarding those swaps that may have components that can be cleared, but would require disentangling the clearable part of the swap. Adherence to the clearing requirement does not require market participants to structure their swaps in a particular manner or disentangle swaps that serve legitimate business purposes.[149]

ii. Swaptions and Extendible Swaps

In response to the Commission's inquiry in the NPRM regarding how to treat a swap that becomes effective upon the exercise of a swaption, ISDA suggested that the resulting swap should only be required to be cleared if the underlying swap and the counterparties to the swap were subject to a clearing requirement at the time that the swaption was executed. ISDA also commented that the same approach should apply to extendible swaps, *i.e.,* a swap for which a party has the option to extend the term of the swap. ISDA reasoned that the parties to a swaption or an extendible swap would not have taken into account the cost of clearing the resultant swap if they negotiated the price of the option before a clearing requirement was applicable to the underlying swap or extended swap. LCH similarly commented that a swaption entered into before a clearing requirement is applicable to the underlying swap would not have been priced with an expectation that the swap created on exercise would be cleared. For this reason, LCH also stated that an underlying swap of a swaption should be subject to an applicable clearing requirement only if the swaption was entered into after the clearing requirement applicable to the underlying swap becomes effective.

The Commission agrees that the cost of clearing may not be reflected in the pricing of the swaption or extendible swap if the clearing requirement for the underlying swap or the extendable swap arises after the execution of the swaption or extendible swap. The Commission is thus clarifying that the clearing requirement only applies to swaps resulting from the exercise of a swaption or extendible swap extension if the clearing requirement would have been applicable to the underlying swap or the extended swap at the time the counterparties executed the swaption or extendible swap.

iii. Ownership Event Changes

In the NPRM, the Commission asked whether it should clarify that the clearing requirement applies to all new swaps and changes in the ownership of a swap, including assignment, novation, exchange, transfer, or conveyance. ISDA responded that a swap that is not subject to the clearing requirement at the time it is executed should not become subject to it upon an ownership event change unless the parties can agree on pricing and other terms necessary to reflect the costs of clearing and until the swap can be transitioned from uncleared to cleared with accuracy.[150]

As the Commission acknowledged above, the cost of clearing may not be reflected in the pricing of a swap if the clearing requirement arises after the execution of that swap. However, unlike with the exercise of a swaption, typically, the original counterparties to a swap that is assigned, novated, exchanged, transferred, or conveyed, along with the new party in ownership, each have an opportunity to revisit the terms of the original swap and account for new costs.[151] While there may be cost implications for the remaining party when its counterparty changes, these cost implications can arise for any number of foreseeable or unforeseeable reasons,[152] and if the remaining party is concerned about potential cost implications resulting from a change of its counterparty, it would be able to protect itself through the terms of the swap, such as including consent rights or required price adjustments upon such an event.[153] The Commission is concerned that if such swaps are not treated as new swaps for the purposes of the clearing requirement, it could be creating incentives to ''trade'' historical swaps through the assignment, novation, exchange, transfer, or conveyance processes to avoid required clearing. Accordingly, for purposes of this rule, a change in ownership of a swap would subject the swap to required clearing under section 2(h)(1) of the CEA in the same manner and to the same extent as a newly executed swap.

Furthermore, for swaps executed after the clearing requirement is in place, the Commission also believes it is important to clarify that a change in ownership may result in a requirement to clear. For example, a financial entity and an end user under section 2(h)(7) of the CEA enter into a swap that is not required to be cleared, and later if the end user transfers its ownership interest in the swap to another party that is a financial entity not eligible to claim an exception under section 2(h)(7), then the swap would be required to be cleared if the other prerequisites to the requirement exist.

E. Regulation 50.5: Clearing Transition Rules

As proposed, § 50.5 would codify section 2(h)(6) of the CEA. Under proposed § 50.5(a), swaps that are part of a class described in § 50.4 but were entered into before the enactment of the Dodd-Frank Act would be exempt from clearing so long as the swap is reported to an SDR pursuant to § 44.02 and section 2(h)(5)(A) of the CEA. Similarly, under proposed § 50.5(b), swaps entered

[149] *See* discussion below regarding § 50.10 and the evasion and abuse standards.

[150] Aside from a general assertion about the challenges of selecting a DCO for clearing, ISDA did not elaborate on its implied assertion that swaps subject to ownership changes may be difficult to transition to clearing accurately.

[151] Going forward, prior to or at the time of ownership change, parties will have to account for any additional costs of clearing.

[152] For example, an ownership change for a bilateral swap may have foreseeable or unforeseeable credit or tax implications for the remaining party.

[153] The Commission observes that the ISDA Master Agreement used for most bilateral swaps requires the prior written consent of the remaining party for any transfer of the agreement other than for certain limited transfers of payments upon default or upon a merger, acquisition, or transfer of all assets.

into after the enactment of the Dodd-Frank Act but before the application of the clearing requirement would be exempt from the clearing requirement if reported pursuant to § 44.03 and section 2(h)(5)(B) of the Act.

LCH suggested that the Commission change the citations in § 50.5(a) from § 44.02 to § 46.3, and in § 50.5(b) from § 44.03 to § 45.3 for swaps entered after the enactment of the Dodd-Frank Act but prior to the compliance date for reporting to an SDR and to § 45.3 for swaps entered into after the compliance date for SDR reporting but prior to the application of a clearing requirement. The Commission agrees with LCH and is modifying the rule to provide more accurate cross references to parts 45 and 46. In addition, under § 50.5(b), the Commission cross references § 46.3 or § 45.3, as appropriate, because until April 2013, certain market participants may properly rely on § 46.3 for reporting swaps executed after the enactment of the Dodd-Frank Act.

F. Regulation 50.6: Delegation of Authority

Under proposed § 50.6(a), the Commission would delegate to the Director of the Division of Clearing and Risk, or the Director's designee, with the consultation of the General Counsel or the General Counsel's designee, the authority to determine whether a swap falls within a class of swaps described in § 50.4 and to communicate such a determination to the relevant DCOs.

ICE supported the Commission's proposal and agreed that this approach would allow DCOs to add new swaps in a timely and efficient manner and rely on the DCOs' risk management processes and governance for adding new products to an existing class. Citadel also supported the proposed delegation provision based on the view that the Commission carefully oversees DCO risk management and it is beneficial to move products into clearing without excessive delay. LCH generally supported the Commission's proposal, but requested confirmation that if the DCO makes a material change to an existing type of swap, the Commission would follow the full clearing requirement determination process.

By contrast, ISDA objected to proposed § 50.6 based on a concern that the Commission would be delegating the clearing determination for DCO product expansions to the DCOs themselves, which would contradict the requirement that the Commission review each DCO submission under section 2(h)(2)(B)(iii)(II) of the CEA. Based on the breadth of the swaps classes under § 50.4, ISDA commented that DCOs will be able to add new swaps under the clearing requirement without review by the Commission under the five statutory factors. ISDA recommended that the delegation provision be supplemented to include (1) a requirement that new DCO product offerings raise no materially different considerations regarding the Commission's determination; (2) a public comment period; and (3) a compliance phase-in period of 90 days.

In response to LCH's request for clarification, the Commission confirms that if a DCO makes a material change to an existing type of swap, the Commission would follow the full clearing requirement determination process. Under the example provided by LCH—extending the tenor of swaps clearing—the DCO's change would require a change to the rule text under § 50.4, which would require Commission action.

In response to ISDA's comments, the Commission observes that the proposed delegation provision was not intended to displace Commission review under section 2(h)(2)(B)(iii)(II) of the CEA. With respect to swaps within the classes identified in § 50.4 that are already being cleared by at least one DCO, the delegation provision will facilitate other DCOs' ability to offer new swaps for required clearing so long as those swaps fall within one of the classes previously established by the Commission. With respect to swaps that meet the specifications identified in § 50.4, but have not been previously offered for clearing by any DCO, the Commission agrees with ISDA that the delegation is limited to those swaps that are consistent with the prior determination. For instance, if a new swap falls within a class under § 50.4, but clearing the swap requires that DCOs adopt a new margining methodology or pricing methodology, the Commission would subject that swap to a new clearing requirement determination process.[154] Accordingly, the Commission is modifying the rule to limit the delegation authority to those instances where the newly submitted swap falls within the class under § 50.4 and is consistent with the Commission's clearing requirement determination for that class of swaps. In addition, the Commission is modifying the rule to require that the Director of the Division of Clearing and Risk notify the Commission prior to exercising any authority delegated under § 50.6.

The Commission declines to adopt ISDA's other recommendations. Provided that inclusion of the new swaps under § 50.4 is consistent with the Commission's previous clearing requirement determination, there is no need for an additional public comment period beyond that provided for as part of the initial clearing requirement determination process. Moreover, under the CEA and Commission regulation, any counterparty to a swap can apply for a stay of the clearing requirement.[155] This stay provision would serve to notify the Commission of objections to inclusion of a particular swap in a previously-defined class. In addition, the Commission does not believe that an additional phase-in period is necessary. Provided that including the new swap is consistent with the prior determination, the compliance phasing for the original class will afford sufficient time for operational and systems implementation. If such time had not been sufficient, the Director of the Division of Clearing and Risk could submit the matter to the Commission for its consideration, or the Commission could itself exercise the delegated authority, under § 50.6(b).

G. Regulation 50.10: Prevention of Evasion of the Clearing Requirement and Abuse of an Exception or Exemption to the Clearing Requirement

The Commission proposed § 50.10 under the rulemaking authority in sections 2(h)(4)(A), 2(h)(7)(F), and 8a(5) of the CEA. Proposed § 50.10 would prohibit evasions of the requirements of section 2(h) of the CEA and abuse of any exemption or exception to the requirements of section 2(h), including the end-user exception or any other exception or exemption that the Commission may provide by rule, regulation, or order.[156]

Proposed § 50.10(a) would make it unlawful for any person to knowingly or recklessly evade, participate in, or facilitate an evasion of any of the requirements of section 2(h).[157] This

[154] Without this delegation process a new swap that falls within a class under § 50.4 could have automatically been included in the clearing requirement without review. The delegation provision provides a check on that process.

[155] *See* section 2(h)(3) of the CEA and regulation 39.5(d).

[156] As noted in the proposing release, the Commission preliminarily viewed evasion of the clearing requirement and abuse of an exemption or exception to the clearing requirement, including the end-user exception, to be related concepts and are informed by new enforcement authority under the Dodd-Frank Act, which added new sections 6(e)(4)–(5), and 9(a)(6), to the CEA. *See* Proposed Clearing Requirement Determination, 77 FR 47170, 47207 (Aug. 7, 2012).

[157] Proposed § 50.10(a) was informed by and consistent with section 6(e)(4) and (5) of the CEA,

Continued

would apply to any requirement under section 2(h) of the CEA or any Commission rule or regulation promulgated thereunder.[158] In the proposing release, the Commission noted, however, that section 2(h)(1)(A) of the CEA provides that it ''shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing'' to a DCO if the swap is required to be cleared. Unlike the knowing or reckless standard under proposed § 50.10(a), section 2(h)(1)(A) imposes a non-scienter standard on swap market participants.[159]

Proposed § 50.10(b) would make it unlawful for any person to abuse the end-user exception to the clearing requirement as provided under section 2(h)(7) of the CEA and § 39.6 (now § 50.50).[160] The proposing release stated that an abuse of the end-user exception to the clearing requirement may also, depending on the facts and circumstances, be an evasion of the requirements of section 2(h). The Commission's preliminary view was informed by section 9(a)(6) of the CEA, which cross-references both the prevention of evasion authority in section 2(h)(4) and prevention of abuse to the exception to the clearing requirement in section 2(h)(7)(F).[161] Thus, the Commission proposed to interpret a violation of section 9(a)(6) of the CEA to also be a violation of proposed § 50.10(b).

Proposed § 50.10(c) would make it unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the CEA, including any exemption or exception, as the Commission may provide by rule, regulation, or order.[162]

In the preamble to the NPRM, the Commission proposed to adopt a ''principles-based'' approach to applying proposed § 50.10 and declined to provide a bright-line test of non-evasive or abusive conduct, because such an approach may be a roadmap for engaging in evasive or abusive conduct or activities. The Commission, however, did propose additional guidance to provide clarity to market participants. The Commission proposed to determine on a case-by-case basis in light of all the relevant facts and circumstances, whether particular transactions or other activities constitute a violation of § 50.10. Similar to its approach in the final rules further defining the term ''swap'' (the ''Product Definition Rules''), the Commission proposed that it would not consider transactions or other activities structured in a manner solely motivated by a legitimate business purpose to constitute evasion or abuse.[163]

i. In General

Four commenters discussed different aspects of proposed § 50.10, including the standard of intent that proposed § 50.10 requires and the proposed legitimate business purpose guidance. After considering the comments as discussed more fully below, the Commission has determined that § 50.10 is necessary to prevent evasion of the requirements of section 2(h) and abuses of any exemption or exception to the requirements of section 2(h). Therefore, the Commission is adopting § 50.10 as proposed, but the Commission is providing additional interpretive guidance regarding § 50.10 as set out below.

ii. Standard of Intent

Two commenters discussed the relevant standard of intent for proposed § 50.10. ISDA commented that § 50.10(a), (b), and (c) should be governed by a single standard of intent. ISDA noted that proposed § 50.10(a) would make it unlawful for any person to ''knowingly or recklessly'' evade the requirements of section 2(h); whereas, proposed § 50.10(b) and (c) would make it unlawful to ''abuse'' exceptions or exemptions to the requirements of section 2(h). ISDA requested the Commission clarify that all three provisions are subject to a scienter standard.

FreddieMac commented that the statutory ''knowing or reckless'' standard for evasion indicates that Congress intended that parties to a swap should be deemed in compliance with the clearing requirement at least where they have submitted a swap for clearing in good faith and have a reasonable expectation of clearing.

In consideration of the comments, the Commission clarifies that it interprets the ''knowingly or recklessly'' standard in § 50.10(a) to be the same as the ''abuse'' standard in § 50.10(b) and (c). The Commission believes that a ''knowingly or recklessly'' standard is consistent with and an appropriate standard of intent for any ''abuse'' of any exemption or exception to the requirements of section 2(h). Additionally, the purpose of § 50.10 is to prevent evasion of the requirements under section 2(h) or to prevent an abuse of an exception or exemption to the requirements under section 2(h). Therefore, the Commission confirms that it would not constitute a violation of § 50.10 where a party submits a swap for clearing in good faith and the party has a reasonable expectation of clearing.

iii. Legitimate Business Purpose

Four commenters discussed the proposed guidance on what constitutes a legitimate business purpose. TriOptima supported the proposed principles-based approach to prevent evasion and the proposed guidance. TriOptima also requested the Commission clarify that activities and transactions carried out for the purpose of reducing counterparty credit risk constitute a legitimate business purpose.

FreddieMac commented that the proposing release creates ambiguity as to the circumstances in which a swap is required to be submitted for clearing. In particular, FreddieMac commented that the NPRM appears to represent the Commission's view that swaps that differ in regard to ''mechanical'' terms may be sufficiently close substitutes such that parties may be required to use such a ''substitute swap'' (where one is available) that is subject to a clearing

which states that any DCO, swap dealer, or major swap participant that ''knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil monetary penalty in twice the amount otherwise available for a violation of section 2(h).''

[158] These requirements include the clearing requirement under section 2(h)(1), reporting of data under section 2(h)(5), and the trade execution requirement under section 2(h)(8), among other requirements. For example, it would be a violation of proposed § 50.10(a) for a SEF to knowingly or recklessly evade or participate in or facilitate an evasion of the trade execution requirement under section 2(h)(8).

[159] Any person engaged in a swap that would be required to be cleared under section 2(h) and Part 50 of the Commission's Regulations, and such person did not submit the swap for clearing, absent an exemption or exception, would be subject to a Commission enforcement action regardless of whether the person knowingly or recklessly failed to submit the swap for clearing.

[160] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560 (July 19, 2012).

[161] Proposed § 50.10(b) is adopted under the authority in both section 2(h)(4)(A) and section 2(h)(7)(F).

[162] This provision was informed by the Dodd-Frank Act amendments in section 2(h)(4)(A) to prescribe rules necessary to prevent evasions of the clearing requirements; section 2(h)(7)(F) to prescribe rules necessary to prevent abuse of the exceptions to the clearing requirements; and the Commission's general rulemaking authority in section 8a(5) to promulgate rules that, in the judgment of the Commission, are reasonably necessary to accomplish any purposes of the CEA.

[163] The Commission's discussion of § 50.10 is similar to its approach for the anti-evasion rules §§ 1.3(xxx)(6) and 1.6 that it recently adopted in a joint final rulemaking with the Securities and Exchange Commission. *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48350–48354 (Aug. 13, 2012).

requirement.[164] FreddieMac asserted that the Commission should not pre-judge when a swap that is required to be cleared is a close substitute for a swap that is not subject to a clearing requirement. Furthermore, FreddieMac commented that the Commission should clarify that a swap that would otherwise be required to be cleared but for a variation in one or more material contract terms should not also be required to be submitted for clearing, provided that such variation of the terms is for legitimate business purposes.

In response to the proposed guidance, ISDA asserted that the Commission did not clearly respond to its comment to the Product Definition Rules that variations based on considerations of the costs and burdens of regulation should be considered to have a legitimate business purpose.[165] ISDA requested the Commission clarify that if a business has a choice, in the absence of fraud, deceit, or unlawful activity, of entering into an uncleared swap, rather than a cleared swap, ''because [the uncleared swap] is cheaper, or free of unwanted aspects of clearing or trading, then that choice should be identified by the Commission as legitimate.'' ISDA also asserted that presence of fraud, deceit, or unlawful activity is a proper prerequisite to evasion or abuse violations. Furthermore, ISDA argued that market participants will be subject to constant uncertainty when structuring and transacting in markets that offer legitimate alternatives if the proposal were adopted.

The Commission is guided by the central role that clearing plays under the Dodd-Frank Act. As noted in the proposing release, ''the requirement that swaps be cleared by DCOs is one of the cornerstones of that reform.'' [166] But even given the importance of central clearing as a means to mitigate counterparty credit risk, reduce systemic risk, and protect U.S. taxpayers, the Commission accepts that a person may have legitimate business purposes for entering into swaps that are not subject to the clearing requirement.

In that regard, commenters requested that the Commission confirm that considering the costs and burdens of regulation, or reduction of counterparty credit risk, are legitimate business purposes. As stated in the proposing release, the Commission will not provide a bright-line test of non-evasive or abusive conduct because such an approach may be a roadmap for engaging in evasive or abusive conduct or activities.[167] The Commission expects, however, that a person acting for legitimate business purposes will naturally weigh many costs and benefits associated with different transactions, including different swap classes and swap specifications that may or may not be subject to the clearing requirement. Therefore, the Commission clarifies that a person's specific consideration of, for example, costs or regulatory burdens, including the avoidance thereof, is not, in and of itself, dispositive that the person is acting without a legitimate business purpose in a particular case.[168] The Commission will view legitimate business purpose considerations on a case-by-case basis in conjunction with all other relevant facts and circumstances.

In the context of the clearing requirement and § 50.10(a), however, the Commission does not believe it would be sufficient to satisfy the legitimate business purpose test where a person's principal purpose of entering into a swap that is not subject to the clearing requirement is to circumvent the costs of clearing.[169] Circumventing the costs of clearing may be a consideration, but cannot be the principal consideration in order to satisfy the legitimate business purpose test. The Commission notes ISDA's comment regarding evasion, and the Commission has determined that to permit such an outcome would create an exception that would swallow the rule and could render the central clearing objectives and benefits under the Dodd-Frank Act meaningless. Moreover, section 2(h)(4)(A) requires the Commission prescribe the rules that the Commission determines ''to be necessary to prevent evasions of the mandatory clearing requirements,'' [170] which evinces Congress's concern that evasion of the clearing requirement would undermine a central purpose of the Dodd-Frank Act. As noted above, the Commission determines that the proposed rules are necessary to prevent evasions of the mandatory clearing requirements, and is therefore adopting them.

Furthermore, the Commission believes that this standard will not subject market participants to significant uncertainty, and the benefits of central clearing will outweigh the costs and burdens of any such uncertainty. In response to Freddie Mac's comment regarding the Commission discussion of ''mechanical'' specifications in the NPRM, that discussion served only to explain the Commission's decision not to include those specifications in the set of class-defining specifications identified by the Commission for its class-based clearing requirement determination. The Commission is not pre-judging whether a swap that contains non class-defining specifications that are not accepted by a DCO would constitute evasion. The Commission recognizes that including such specifications in a swap could serve a legitimate business purpose if, for example, such specifications would legitimately result in a more accurate hedge of a business risk. In keeping with the Commission's guidance that it will use a principles-based approach, assessing whether any particular swap that includes such terms would constitute evasion will be done on a case-by-case basis in light of all the relevant facts and circumstances.

Finally, the Commission declines to adopt ISDA's suggestion that the presence of fraud, deceit, or other unlawful activity is a prerequisite to establishing a violation of evasion or abuse under § 50.10. Although it is likely that fraud, deceit, or unlawful activity will be present where knowing or reckless evasion or abuse has occurred, the Commission does not believe that these factors are prerequisites to a violation of § 50.10. Rather, the presence or absence of fraud, deceit, or unlawful activity is one circumstance the Commission will consider when evaluating a person's conduct or activities.

IV. Implementation

The Commission proposed to require compliance with the clearing requirement for the classes of swaps identified in proposed § 50.4 according to the compliance schedule contained in

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[164] *See* NRPM at 47191, fn. 97 (discussing a category of interest rate swap specifications ''that are commonly used to address mechanical issues'').

[165] *See* Product Definition Rules, 77 FR at 48302, fn. 1052.

[166] NPRM at 47171.

[167] NPRM at 47207.

[168] Examples described in the guidance are illustrative and not exhaustive of the conduct or activities that could be considered evasive or abusive. In considering whether conduct or activities is evasive or abusive, the Commission will consider the facts and circumstances of each situation.

[169] ISDA also requested clarification that avoiding ''unwanted aspects of clearing or trading'' should be considered to be a legitimate business purpose. ISDA did not specify what it means by ''unwanted aspects,'' nor did it explain how avoiding aspects of clearing or trading could be distinguished from evasion. Accordingly, the Commission is declining to include this concept as part of its guidance regarding legitimate business purposes.

[170] Section 2(h)(4)(A) of the CEA, 7 U.S.C. 2(h)(4)(A).

§ 50.25.[171] Under this schedule, compliance with the clearing requirement would be phased by type of market participant entering into a swap subject to the clearing requirement.

The Commission received no comments specifically addressing the use of § 50.25. Vanguard recommended that the Commission should not implement mandatory clearing for any swaps until market participants have time to negotiate and execute all necessary documentation. Vanguard recommended the Commission delay compliance with the clearing requirement until six months after August 29, 2012, the date on which ISDA and FIA published a standard form of the futures agreement addendum for cleared swaps, *i.e.,* February 28, 2013. SIFMA AMG also expressed concern about legal documentation and negotiations taking many months, and the difficulty buy-side clients face in finding FCMs to clear for them. SIFMA AMG also recommended the clearing requirement be delayed for six months.

In response to Vanguard's and SIFMA AMG's comments and light of the circumstances discussed below, compliance with the clearing requirement will not be required for any swaps until March 11, 2013. This extension of at least 6 months beyond publication of the FIA-ISDA clearing addendum applies to all market participants and addresses Vanguard's and SIFMA AMG's concerns about documentation. The Commission accounted for precisely this type of documentation issue in its adoption of § 50.25. Accordingly, Category 2 Entities and Category 3 Entities have 90 and 180 days beyond March 11, 2013, to come into compliance with the new clearing requirement, which is well beyond the six months from August 29, 2012, as requested by Vanguard and SIFMA AMG. The Commission also notes that any market participant may petition for relief under § 140.99 if that entity is unable to find an FCM to clear its swaps or if it needs additional time to complete requisite documentation.[172]

On September 10, 2012, the Commission clarified the timing of its swap dealer registration rules. The swap dealer registration regulations go into effect on October 12, 2012, and entities that have more than the de minimis level of dealing (swaps entered into after October 12) must register by no later than two months after the end of the month in which they surpass the de minimis level. By way of example, if an entity reaches $8 billion in swap dealing the day after October 12, then the entity would have to register within two months after the end of October, or by December 31, 2012.

Given that swap dealers will not be required to register until the end of the year, and in light of requests for clarification regarding the application of § 50.25, the Commission is clarifying that swaps executed prior to specific compliance dates set forth below are not subject to the clearing requirement.

To promote certainty for market participants, the Commission is setting specific dates for compliance. Accordingly, the requirement for Category 1 Entities to begin clearing will commence on Monday, March 11, 2013, for swaps they enter into on or after that date. Category 2 Entities are required to clear swaps beginning on Monday, June 10, 2013, for swaps entered into on or after that date, and Category 3 Entities would be required to clear swaps beginning on Monday, September 9, 2013, for swaps entered into on or after that date.

For example, no swap executed between two Category 1 Entities prior to March 11, 2013, is required to be cleared. In other words, Category 1 Entities entering into swaps falling within one of the classes identified in § 50.4 on or after March 11, 2013, are required to clear those swaps. Category 2 Entities must begin clearing swaps pursuant to the new clearing requirement on or after June 10, 2013, and Category 3 Entities must begin clearing such swaps if they are entered into on or after the September 9, 2013.

The above schedule will apply to compliance with required clearing for iTraxx. However, if no DCO has begun offering client clearing for iTraxx by February 11, 2013, then compliance with the required clearing of iTraxx will commence sixty days after the date on which iTraxx is first offered for client clearing by an eligible DCO. If an eligible DCO offers client clearing for iTraxx on or before September 9, 2013, the following phased implementation schedule will apply: Category 1 Entities are required to clear iTraxx indices entered into on or after the date 60 days after the date on which iTraxx is first offered for client clearing by an eligible DCO; Category 2 Entities are required to clear iTraxx entered into on or after the date 150 days after the date on which iTraxx is first offered for client clearing by an eligible DCO; and Category 3 Entities are required to clear iTraxx entered into on or after the date 240 days after the date on which iTraxx is first offered for client clearing by an eligible DCO. There will be no phasing of compliance if an eligible DCO offers client clearing for iTraxx after September 9, 2013. Rather, all three categories of market participants will be expected to come into compliance by 60 days after the date on which iTraxx is first offered for client clearing by an eligible DCO.

This clarification avoids the possibility that Active Funds that are included in Category 1 Entities would be required to clear before swap dealers, and provides market participants with certainty as to when they must begin clearing swaps.

With regard to Active Funds, in order to promote orderly implementation of part 23 and the part 50 rules, both of which refer to Active Funds, the Commission is harmonizing the annual calculation period for both implementation of part 23's swap trading relationship documentation requirements under § 23.504[173] and the clearing requirement compliance schedule under § 50.25. For purposes of implementing § 23.504, the Commission defined an Active Fund, as any private fund as defined in section 202(a) of the Investment Advisers Act of 1940, that is a not a third party subaccount and that executes 200 or more swaps per month based on a monthly average over the 12 months preceding the adopting release, *i.e.,* September 11, 2012.[174] For purposes of § 50.25, the Commission defined Active Fund in the same manner except that the monthly average over the 12 months would be preceding the date of publication of the clearing requirement determination in the **Federal Register**, *i.e.,* whatever date this adopting release is published.[175] Market participants have asked the Commission to harmonize these two dates so that there will be one self-identified list of Active Funds for purposes of both implementation schedules under parts 23 and 50. The Commission agrees with this approach and is modifying both compliance schedules to require private funds to calculate the number of swaps they enter into as a monthly average

[171] 17 CFR 50.25, Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012). Regulation 50.25 defines the terms Category 1 Entity and Category 2 Entity; this release uses the term Category 3 Entity to refer to counterparties to swaps falling under § 50.25(b)(3).

[172] 17 CFR 140.99 sets for the process for addressing requests for exemptive, no-action, and interpretative letters.

[173] Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012).

[174] *See* 77 FR at 55940.

[175] *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR at 44456.

over the past 12 months preceding November 1, 2012.

In addition, the Commission clarifies that for purposes of calculating the number of swaps a fund executes as a monthly average over the 12 months preceding November 1, 2012, for both part 23 and part 50, private funds as defined in section 202(a) of the Investment Advisers Act of 1940 are not required to include foreign exchange swaps, in light of the final determination from the Secretary of the Treasury to exempt such swaps from the CEA.[176]

Finally, ISDA commented that the inter-affiliate exemption should be finalized prior to requiring compliance with the clearing requirement. The Commission has proposed its inter-affiliate exemption rules[177] and anticipates that it will finalize those rules prior to the aforementioned compliance dates for these clearing requirement determinations.

V. Cost-Benefit Considerations

A. Statutory and Regulatory Background

As discussed in the NPRM, and above, certain OTC derivatives, such as credit default swaps (CDS) played a prominent role in the financial crisis in the fall of 2008, highlighting the risk that opaque OTC markets can create for the financial system by linking together financial institutions in ways that are not well-understood.[178] The failure to adequately collateralize the risk exposures posed by OTC derivatives, along with the contagion effects of the vast web of uncollateralized counterparty credit risk, led many to conclude that OTC derivatives should be centrally cleared.

A fundamental premise of the Dodd-Frank Act is that the use of properly functioning central clearing can reduce systemic risk. Congress included the statutory clearing requirement in the Dodd-Frank amendments to the CEA to standardize and reduce counterparty risk associated with swaps, and, in turn, mitigate the potential systemic impact of such risks and reduce the likelihood for swaps to cause or exacerbate instability in the financial system. The clearing requirement determinations and regulations contained in this adopting release identify certain classes of swaps that are required to be cleared pursuant to the Dodd-Frank Act's[179] clearing requirement incorporated within amended section 2(h)(1)(A) of the CEA.[180]

The Commission's regulations establishing the process for the review of swaps that are submitted for a mandatory clearing determination are found in Part 39 of the Commission's regulations. Regulation 39.5 provides an outline for the Commission's review of swaps for required clearing.[181] Regulation 39.5 requires the Commission to review all swaps submitted by DCOs or those swaps that the Commission opts to review on its own initiative.[182] Under section 2(h)(2)(D) of the CEA, in reviewing swaps for required clearing, the Commission must take into account the following factors: (1) Significant outstanding notional exposures, trading liquidity and adequate pricing data, (2) the availability of rule framework, capacity, operational expertise and credit support infrastructure, (3) the effect on the mitigation of systemic risk, (4) the effect on competition and (5) the existence of reasonable legal certainty in the event of the insolvency of the DCO or one or more of its clearing members.[183] Regulation 39.5 also directs DCOs to provide to the Commission other information, such as product specifications, participant eligibility standards, pricing sources, risk management procedures, a description of the manner in which the DCO has provided notice of the submission to its members and any additional information requested by the Commission. This information is designed to assist the Commission in identifying those swaps that are required to be cleared.

On February 1, 2012, Commission staff sent a letter requesting that registered DCOs submit all swaps that they were accepting for clearing as of that date, pursuant to § 39.5 of the Commission's regulations. The Commission received submissions relating to CDS and interest rate swaps, as well as agricultural and energy swaps.

This initial Commission determination addresses certain interest rate swaps and CDS, and is the first of a series of determinations that the Commission anticipates making as part of a phased approach to implementing mandatory clearing. The Commission chose to issue its first clearing requirement proposal for interest rate swaps and CDS because those swaps represent a significant share of the market in the case of interest rate swaps, and pose a unique risk profile in the case of CDS. In addition, the market has been clearing both types of swaps for some time, and market participants asked that the Commission begin with interest rate swaps and CDS. The Commission intends subsequently to consider other swaps submitted by DCOs, such as agricultural, energy, and equity indices.

As stated in both the NPRM and above, the decision to initially focus on CDS and interest rate swaps from amongst the swaps submitted to the Commission for mandatory clearing determinations pursuant to section 2(h)(2) is a function of both the market importance of these swaps and the fact that they already are widely cleared. In order to move the largest number of swaps to required clearing in its initial determinations, the Commission believes that it is prudent to focus on those swaps that have the highest market shares and market impact. Further, for these swaps there is already a blueprint for clearing and appropriate risk management. CDS and interest rate swaps fit these considerations and therefore are well suited for required clearing consideration.[184] In the discussion that follows, the importance of central clearing is explained and highlighted to provide the background for the Commission's consideration of the costs and benefits in this rulemaking as the Commission exercises its discretion under section 2(h)(2)(D) of the CEA to determine whether swaps that are submitted for a mandatory clearing determination are required to be cleared.

B. Overview of Swap Clearing

The following background discussion provides context for the Commission's consideration of the costs and benefits of its clearing determinations in this rulemaking.

[176] *See http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf* (finalizing Determinations of Foreign Exchange Swaps and Forwards, 75 FR 66829 (Oct. 28, 2010)).

[177] Clearing Exemption for Swaps Between Certain Affiliated Entities, 77 FR 50425 (Aug. 21, 2012).

[178] 77 FR 47170 (Aug. 7, 2012). *See also* Section I.B above.

[179] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[180] This section states: ''It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.''

[181] 76 FR 44464 (July 26, 2011).

[182] *See* § 39.5(b), § 39.5(c). Under section 2(h)(2)(B)(ii) of the CEA, ''[a]ny swap or group, category, type, or class of swaps listed for clearing by a [DCO] as of the date of enactment shall be considered submitted to the Commission.''

[183] Section 2(h)(2)(D) of the CEA and § 39.5(b)(ii).

[184] 77 FR 47172 (August 7, 2012). *See also* Section I.F above.

i. How Clearing Reduces Risk

When a bilateral swap is cleared, the clearinghouse becomes the counterparty to each of the original counterparties to the swap. This standardizes counterparty credit risk for the original swap participants in that they each bear the same risk—*i.e.,* the risk attributable to facing the clearinghouse as counterparty. In addition, clearing mitigates counterparty risk to the extent that the clearinghouse is a more creditworthy counterparty relative to the original swap participants. Clearinghouses have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

Given the variety of effective clearinghouse tools to monitor and manage counterparty credit risk, the Commission believes that DCOs will continue to be some of the most creditworthy counterparties in the swap markets. These tools include the contractual right to: (1) Collect initial and variation margin associated with outstanding swap positions; (2) mark positions to market regularly (usually one or more times per day) and issue margin calls whenever the margin in a customer's account has dropped below predetermined levels set by the DCO; (3) adjust the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying; and (4) close out the swap positions of a customer that does not meet margin calls within a specified period of time.

Moreover, in the event that a clearing member defaults on their obligations to the DCO, the latter has a number of remedies to manage associated risks, including transferring the swap positions of the defaulted member, and covering any losses that may have accrued with the defaulting member's margin and other collateral on deposit. In order to transfer the swap positions of a defaulting member and manage the risk of those positions while doing so, the DCO has the ability to: (1) Hedge the portfolio of positions of the defaulting member to limit future losses; (2) partition the portfolio into smaller pieces; (3) auction off the pieces of the portfolio, together with their corresponding hedges, to other members of the DCO; and (4) allocate any remaining positions to members of the DCO. In order to cover the losses associated with such a default, the DCO would typically draw from (in order): (1) The initial margin posted by the defaulting member; (2) the guaranty fund contribution of the defaulting member; (3) the DCO's own capital contribution; (4) the guaranty fund contribution of non-defaulting members; and (5) an assessment on the non-defaulting members. These mutualized risk mitigation capabilities are largely unique to clearinghouses, and help to ensure that they remain solvent and creditworthy swap counterparties even when dealing with defaults by their members or other challenging market circumstances.

ii. Movement of Swaps Into Clearing

There is significant evidence that some parts of the OTC swap markets (the interest rate swaps and CDS markets in particular) have been migrating into clearing over the last number of years in response to market incentives as well as in anticipation of the Dodd-Frank Act's clearing requirement. LCH data, for example, shows that the outstanding volume of interest rate swaps cleared by LCH has grown steadily since at least November 2007, as has the monthly registration of new trade sides.[185] Data provided to the Commission shows that the notional amount of cleared interest rate swaps is approximately $72 trillion as of January 2007, and just over $236 trillion in September 2010, an increase of 228% in three and a half years.[186] Together, those facts indicate increased demand for LCH clearing services related to interest rate swaps, a portion of which preceded the Dodd-Frank Act.[187] Data available through CME and TriOptima indicate similar patterns of growing demand for interest rate swap clearing services, although their publically available data does not provide a picture of demand prior to the passage of the Dodd-Frank Act.[188]

In addition to interest rate swap clearing, major CDS market participants are clearing their CDS indices and single names in significant volumes. As explained above, in 2008, prior to the enactment of the Dodd-Frank Act, the Federal Reserve Bank of New York (FRBNY) began encouraging market participants to establish a central counterparty to clear CDS.[189] In the past four years CDS clearing has grown significantly. As a representation of this growth, CME now has initial margin for CDS in excess of $1.8 billion and a guaranty fund of approximately $629 million,[190] and ICE Clear Credit has initial margin on deposit for CDS of $10.8 billion and a guaranty fund equal to $4.4 billion.[191] ICE Clear Europe has initial margin for CDS totaling $6.8 billion and a guaranty fund of $2.7 billion.[192]

iii. The Clearing Requirement and Role of the Commission

In the Dodd-Frank Act, Congress directed that clearing shift from a voluntary practice to a mandatory practice for certain swaps and gave the Commission responsibility for determining which swaps would be required to be cleared. Under section 2(h)(2) of the CEA, the Commission is required to review each swap, or group, category, type, or class of swaps that a DCO clears and submits to the Commission in order to determine whether the submitted swaps are required to be cleared. In making these clearing determinations and promulgating the final rules, the Commission has taken its direction from the statutory text and is implementing the statute by determining, in accordance with the five factors set forth in the statute, whether swaps submitted to the Commission for a mandatory

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[185] As a measure of volume, LCH accounts for each swap it clears as one trade side, which represents one counterparty to each two-sided trade.

[186] Data provided to the Commission by LCH. In the context of interest rate swaps, the notional amount refers to the specified amount on which the exchanged swap payments are calculated. It is a nominal amount that is not exchanged between counterparties.

[187] *See http://www.lchclearnet.com/swaps/volumes/.* Since the Dodd-Frank Act was passed in July 2010, outstanding trade sides at LCH have increased from approximately 1.6 million to 2.3 million in September of 2012, an increase of approximately 44%. Indeed, the number of new trade sides being submitted for clearing per month increased from approximately 55,000 trade sides per month to 150,000 trade sides per month, an increase of approximately 270%.

[188] *See http://www.cmegroup.com/trading/interest-rates/cleared-otc/index.html#data* and *http://www.trioptima.com/repository/historical-reports.html.* Notably, CME launched its interest rate swap clearing service in the fall of 2010, after the Dodd-Frank Act was passed.

[189] *See* Federal Reserve Bank of New York, Press Release, ''New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives,'' Oct. 31, 2008, available at *http://www.newyorkfed.org/newsevents/news/markets/2008/an081031.html,* which references documents prepared by market participants describing the importance of clearing. *See also* Ciara Linnane and Karen Brettell, ''NY Federal Reserve pushes for central CDS counterparty,'' Reuters, Oct. 6, 2008.

[190] *See http://www.cmegroup.com/clearing/cme-clearing-overview/safeguards.html* for data regarding CME's guaranty fund, posted as of May 10, 2012.

[191] *See https://www.theice.com/clear_credit.jhtml* for data on the size of guaranty fund, posted as of May 10, 2012.

[192] *Id.* The data is not adequate to enable the Commission to determine how much of the movement into clearing is attributable to natural market forces or anticipated requirements under the Dodd-Frank Act.

clearing determination are required to be cleared. As described above, the Commission has decided to initially focus on interest rate swaps and CDS because of the market importance of these swaps and the fact that they already are widely cleared.

In determining pursuant to section 2(h)(2)(D) whether these particular swaps should be required to be cleared, the Commission has taken into account the fact that voluntary clearing of swaps has increased over the past years (perhaps due in part to anticipation of the clearing requirement to be imposed under the Dodd-Frank Act, but perhaps due in part to a realization of the benefits of clearing after the financial crisis). These industry efforts and the extent to which voluntary clearing of swaps has already occurred provide a useful reference point for the Commission's consideration of the costs and benefits of its actions in determining whether particular swaps should be required to be cleared.[193]

In the discussion that follows, the Commission summarizes and evaluates the costs and benefits of the new clearing requirements resulting from the Commission's clearing determinations in this rulemaking. In the context of this relevant statutory provision and ongoing industry initiatives, in the sections that follow, the Commission also has considered its clearing determinations in light of cost-benefit issues raised by commenters and suggested alternatives.

In general, the Commission believes that the costs and benefits related to the required clearing of the classes of interest rate swaps and CDS resulting from this rulemaking are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps and the statutory clearing mandate in section 2(h) of the CEA to achieve that objective; and (2) the Commission's determination under section 2(h)(2)(D) that these particular classes of swaps should be required to be cleared. The Commission will discuss the costs and benefits of the overall move from voluntary clearing to required clearing for the particular swaps subject to this new clearing requirement.[194] However, in so doing, the Commission believes that it is not readily ascertainable whether an increased use of clearing following such determinations should be attributed to statutory or regulatory requirements that particular swaps be required to be cleared, as compared to swap market participants' market-based decisions to increase the use clearing to reduce risks and costs.[195]

C. Consideration of the Costs and Benefits of the Commission's Action

i. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

As stated above, the Commission received a total of 33 comment letters following the publication of the NPRM, many of which strongly supported the proposed regulations. Some commenters generally addressed the cost-and-benefit aspect of the current rule; none of them, however, provided any quantitative data in response to the Commission's requests for comment. In the sections that follow the Commission considers: (1) Costs and benefits of required clearing for the classes of swaps identified in this adopting release; (2) alternatives contemplated by the Commission and the costs and benefits relative to the approach adopted herein; (3) the impact of required clearing for swaps under the identified classes of swaps in light of the 15(a) factors. The Commission also discusses the corresponding comments accordingly.

ii. Costs and Benefits of Required Clearing Under the Final Rule

In order to comply with required clearing under this adopting release, market participants are likely to face certain startup and ongoing costs relating to technology and infrastructure, new or updated legal agreements, ongoing fees from service providers, and costs related to collateralization of their positions. The per-entity costs related to changes in technology, infrastructure, and legal agreements are likely to vary widely, depending on each market participant's existing technology infrastructure, legal agreements, operations, and anticipated needs in each of these areas. For market participants that already use clearing services, some of these costs may be expected to be lower, while the opposite will likely be true for market participants that must begin to use clearing services only because of the new clearing requirement. The costs of collateralization, on the other hand, are likely to vary depending on a number of factors, including whether an entity is subject to capital requirements or not, and the differential between the cost of capital for the assets the entity uses as collateral, and the returns the entity realizes on those assets.

There are also significant benefits associated with increased clearing, including reducing and standardizing counterparty credit risk, increased transparency, and easier access to the swap markets. These effects together will contribute significantly to the stability and efficiency of the financial system. The Commission lacks data to quantify these benefits with any degree of precision. The Commission notes, however, that the extraordinary financial system turbulence of 2008 has had profound and long-lasting adverse effects on the economy, and therefore reducing systemic risk provides significant, if unquantifiable, benefits.[196] Also, as is the case for the

[193] The Commission also recognizes that there might not be a linear relationship between the quantity of swaps that are cleared (whether measured by number of swaps, the notional value of swaps, or some other measure of swap quantity, such as the exposure resulting from the swaps) and the costs and benefits resulting from clearing. For example, if the Commission were to assume that the rule would result in a doubling of the quantity of a certain type of swap that is cleared, it would not necessarily be the case that the costs and benefits of clearing that type of swap would double. Rather, the relationship could be non-linear for a variety of reasons (such as variations among the users of that type of swap). In fact, it may be reasonable to assume that where the costs of clearing are relatively low and the benefits are relatively high, market participants already voluntarily clear swaps even in the absence of a clearing requirement.

[194] Embedded in this approach is the assumption that costs and benefits of increased clearing prior to the determination is not a function of the Dodd-Frank Act or the clearing determination contained herein. As stated above, the Commission acknowledges that some increases in clearing that have already occurred are likely the result of anticipated clearing requirements. However, it is not possible to estimate how much of the increases in clearing are the result market forces, and how much is a function of expected requirements related to clearing. Both factors have likely contributed to the increases in clearing that have occurred prior to this rule.

[195] It is also possible that some market participants would respond to the current rule's requirement that certain types of swaps be cleared by decreasing their use of such swaps. This possibility contributes to the uncertainty regarding how the current rule will affect the volume of swaps that are cleared.

[196] For example, the PEW Economic Policy Group estimates total costs of the acute stage of the crisis for U.S. interests were approximately $12.04 trillion, including lost GDP, wages, real estate wealth, equity wealth, and fiscal costs. Their estimates include $7.4 trillion in losses in the

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costs related to clearing, these benefits would be relatively less to the extent that market participants are already using clearing in the absence of a requirement.

a. Technology, Infrastructure, and Legal Costs

With respect to technology and infrastructure, for market participants that already use swap clearing services or trade futures, many of the backend requirements for technology and infrastructure that supports cleared swaps are likely to be quite similar, and therefore necessary changes to those systems are likely to require relatively lower costs. Market participants that are not currently using swap clearing services or trade futures, however, may need to implement appropriate infrastructure and technology to connect with an FCM that will clear swaps on their behalf.

Similarly for legal fees, the costs related to clearing the swaps that are subject to this clearing requirement are likely to vary widely depending on whether market participants already use clearing services or trade futures. For those market participants that have not already engaged an FCM, it has been estimated, in response to another rulemaking, that smaller financial institutions will spend between $2,500 and $25,000 reviewing and negotiating legal agreements when establishing a new business relationship with an FCM.[197] Commenters on this rulemaking did not provide data that would enable the Commission to determine to what degree these estimates would apply to larger entities establishing a relationship with an FCM or to determine costs associated with entities that already have established relationships with one or more FCMs, but need to revise those agreements.[198] Even accepting the data provided for smaller financial institutions, the Commission lacks sufficient data to calculate a reasonable estimate of the potential costs that are likely to depend significantly on the specific business needs of each entity and therefore are expected to vary widely among market participants.

Citadel commented that the fact that all the interest rate swaps and CDS included in the Commission's proposal are already being cleared by registered DCOs in material volumes provides clear evidence that there is the rule framework, capacity, operational expertise and resources, and credit support infrastructure necessary to clear each of the swaps that are the subject of the Commission's determination.

SIFMA AMG and Vanguard expressed concern about legal documentation and negotiations taking many months, and recommended the clearing requirement be delayed. They also raised doubt about the readiness of market participants to comply with the Commission's upcoming swap customer segregation rules. Vanguard further stated that it has ''serious reservations about the potential impact on cost, liquidity, and heightened margin risk which could result from the premature roll-out of the clearing mandate.''

In light of the ''lack of experience and practical know-how'' related to DCO insolvency, ISDA recommended that the Commission conduct a study on insolvency. Citadel, on the other hand, stated that reasonable legal certainty exists in the event of an insolvency of a DCO or one or more DCO members with regard to the treatment of customer and swap counterparty positions, funds, and property.

Commission Response

In response to Vanguard and SIFMA AMG's concerns about legal documentation and operational readiness, the Commission has clarified that compliance with the clearing requirement will not be required for any swaps until March 11, 2013, which responds to commenters' recommendation that the clearing requirement by delayed for six months to allow for documentation. Moreover, Category 2 and Category 3 entities will have until June 10, 2013, and September 9, 2013, respectively, to come into compliance with the new requirement.[199] In response to ISDA's statements regarding insolvency, as explained above, Commission staff actively participates in a number of international efforts related to clearinghouses and clearing member insolvency, as well as in coordination efforts with U.S. authorities.[200]

Additionally, the Commission is exercising the anti-evasion rulemaking authority granted to it by the Dodd-Frank Act. In terms of legal costs, market participants will be responsible for complying with the new anti-evasion requirements. Generally, rule § 50.10 states that it is unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the CEA, to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the CEA and Commission rules, or to abuse any exemption or exception to the requirements of section 2(h) of the CEA, including any exemption or exception as the Commission may provide by rule, regulation, or order.

This rule is expected to help ensure that would-be evaders cannot engage in conduct or activities that constitute an evasion of the requirements of section 2(h) or an abuse of any exemption or exception to such requirements. The Commission also sets forth guidance as to how it would determine if such evasion or abuse has occurred, while at the same time preserving the Commission's ability to determine, on a case-by-case basis, with consideration given to all the facts and circumstances, that other types of transactions or activities constitute an evasion or abuse under § 50.10.[201]

The Commission believes that participants in the swap markets should have policies and procedures already in place to ensure that their employees, affiliates, and agents will refrain from engaging in activities, including devising transactions, for the purpose of

equity markets between June 2008 and March 2009, but do not include subsequent gains in equity markets that restored markets to their mid-2008 levels by the end of 2009. In addition, their calculations do not include continued declines in real estate markets subsequent to March 2009. *See* Pew Economic Policy Group, ''The Cost of the Financial Crisis: The Impact of the September 2008 Economic Collapse,'' March 2010. The IMF estimated that the cost to the banking sector of the financial crisis through 2010 was approximately $2.2 trillion and reported a range of estimates for total cost to the taxpayer of GSE bailouts that ranged from $160 billion (Office of Management and Budget, February 2010) to $500 billion (Barclays Capital, December 2009). *See* IMF, ''Global Financial Stability Report: Responding to the Financial Crisis and Measuring Systemic Risks,'' October 2010. Both studies acknowledge that the estimates are subject to uncertainties.

[197] *See* comments to End-User Exception to Mandatory Clearing of Swaps; Proposed Rule, 75 FR 80747 (Dec. 23, 2011), including Chatham Financial letter at 2, available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077,* and Webster Bank letter at 3, available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076.*

[198] In its letter, FIA stated that it does not collect information from its members concerning fees charged for particular services, and thus is unable to respond to the Commission's request for date regarding FCM fees. No other commenter responded to the request for information regarding legal fees.

[199] *See* Section IV above, clarifying that compliance for Category I, II, and III Entities will apply, respectively, to swaps executed on or after March 11, 2013, June 10, 2013, and September 9, 2013.

[200] *See* Section II.B above.

[201] The Commission has not adopted a ''bright-line'' standard for evasion in order to avoid providing a ''road-map'' for evasion. The Commission's discussion of § 50.10 is similar to its approach for the anti-evasion rules §§ 1.3(xxx)(6) and 1.6 that it recently adopted in a joint final rulemaking with the Securities and Exchange Commission. *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48350–48354 (Aug. 13, 2012).

evading, or in reckless disregard of, the requirements of section 2(h) of the CEA and Commission regulations or to abuse any exemption or exception to such requirements. The Commission believes that it will not be necessary for firms that currently have adequate compliance programs to hire additional staff or significantly upgrade their systems to comply with the proposed rule. Firms may, however, incur some costs, such as costs associated with training staff on the new clearing requirement rules.

In addition, market participants may incur costs when determining whether they are properly relying on a legitimate business purpose. The Commission in choosing a principles-based approach rather than a bright-line test, recognizes that there may be direct costs and indirect costs due to perceived uncertainty related to determining what constitutes a legitimate business purpose for entering into swaps that are not subject to the clearing requirement. As stated above, the Commission will not provide a bright-line test of non-evasive or abusive conduct because such an approach may be a roadmap for engaging in evasive or abusive conduct or activities. However, the Commission has provided guidance above regarding what is meant by certain key terms in § 50.10, and the Commission has clarified its belief that where a person's principal purpose in entering into a swap that is not subject to the clearing requirement is to circumvent the costs of clearing, the legitimate business purpose test would not be satisfied. The Commission anticipates that this guidance will mitigate costs related to determining whether particular conduct or activity could be construed as being an evasion of the requirements of section 2(h) or an abuse of any exemption or exception to the requirements.[202]

b. Ongoing Costs Related to FCMs and Other Service Providers

In the NPRM, the Commission considered ongoing costs associated with fees charged by FCMs that market participants will bear, in addition to costs associated with technological and legal infrastructure. Regarding fees, DCOs typically charge FCMs an initial transaction fee for each of the FCM's customers' interest rate swaps that are cleared, as well as an annual maintenance fee for each of their customers' open positions. Not including customer-specific and volume discounts, the transaction fees for interest rate swaps at the CME range from $1 to $24 per million notional amount for interest rate swaps and the maintenance fees are $2 per year per million notional amount for open positions.[203] LCH transaction fees for interest rate swaps range from $1-$20 per million notional amount, and the maintenance fee ranges from $5-$20 per swap per month, depending on the number of outstanding swap positions that an entity has with the clearinghouse.[204] For CDS, ICE Clear Credit charges an initial transaction fee of $6 per million notional amount. There is no maintenance fee charged by ICE for maintaining open CDS positions.[205]

FCMs will also bear additional fees with respect to their house accounts at the DCO to the extent that they clear more swaps due to the clearing requirement. For example, for interest rate swaps that they clear through CME, clearing members are charged a transaction fee that ranges from $0.75 to $18.00 per million notional, depending on the transaction maturity.[206] Members, however, are not charged annual maintenance fees for their open house positions.[207] For CDS, clearing members at ICE Clear Credit are charged $5–6 per transaction per million notional and there is no maintenance fee.[208]

As discussed above, it is difficult to predict precisely how the requirement to clear the classes of swaps covered by this new requirement will increase the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. However, the Commission expects that application of the clearing requirement to the swaps covered by the new rule will generally increase the use of clearing, leading to the ongoing transaction costs noted above.

In addition, the Commission understands that FCM customers that only transact in swaps occasionally are typically required to pay a monthly or annual fee to each FCM that ranges from $75,000 to $125,000 per year.[209] Again, although it is difficult to predict precisely how many FCM customers would be subject to such fees based on the clearing requirement for CDS and interest rate swaps, the Commission expects that some market participants that previously did not use clearing would be subject to the requirements of the current rule.

In the NPRM, the Commission asked a series of questions related to FCM fees and invited comment on the fee information presented. No commenter responded to the questions asked or provided any additional information with regard to clearing fees. As noted above, FIA raised the issue only to explain that it does not collect such information from its members.

c. Costs Related to Collateralization of Cleared Swap Positions

As mentioned above, market participants that enter into swaps with the specifications identified in the classes subject to this adopting release will be required to post collateral with their FCM and/or at the DCO. The incremental cost of collateral resulting from the application of the clearing requirement depends on the extent to which such swaps are already being cleared (even in the absence of the requirement) or otherwise collateralized bilaterally. The incremental cost also depends on whether such swaps are, if not collateralized, priced to include implicit contingent liabilities and counterparty credit risk born by the counterparty to the swap.

1. Quantitative Approach Presented in the NPRM

A conservative approach would be to assume that all the swaps that are currently not cleared would be covered by the new clearing requirement, and that they are completely uncollateralized, and not priced to include implicit contingent liabilities and counterparty credit risk born by the counterparty. Under this approach, imposition of the clearing requirement for those types of swaps would create additional costs due to: (1) The difference between cost of capital and returns on that capital for assets posted to meet initial margin for the entire term of the swap; and (2) the difference

[202] *See* above at Section III.G.

[203] *See* CME pricing charts at: *http://www.cmegroup.com/trading/cds/files/CDS-Fees.pdf;*

http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Customer-Fee.pdf;

and *http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Self-Clearing-Fee.pdf.*

[204] *See* LCH pricing for clearing services related to OTC interest rate swaps at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

[205] *See* ICE Clear Credit fees for CDS at: *https://www.theice.com/publicdocs/clear_credit/circulars/ICEClearCredit%20Fee%20Schedule%20Notice_FINAL.pdf.*

[206] *See* CME pricing charts.

[207] *See id.*

[208] *See* ICE Clear Credit fees for CDS at: *https://www.theice.com/publicdocs/clear_credit/circulars/ICEClearCredit%20Fee%20Schedule%20Notice_FINAL.pdf.*

[209] *See* letters from Chatham and Webster Bank. The Commission is not aware of similar annual fees charged to larger customers. The Commission believes that FCMs are more likely to charge such fees to smaller customers in order to cover the fixed costs that are not likely covered through fees charged on a per-swap basis to customers that use swaps less frequently.

between cost of capital and returns on that capital for assets paid to meet the cost of capital for variation margin to the extent a party is ''out of the money'' on each swap. Under the assumptions mentioned above, if every interest rate swap and CDS that is not currently cleared were moved into clearing, the additional initial margin that would need to be posted is approximately $19.2 billion for interest rate swaps and $53 billion for CDS.[210]

In the NPRM, the Commission calculated its estimated additional initial margin amounts based on the following assumptions. According to representations made to the Commission by LCH, they clear approximately 51% of the interest rate swaps market. The total amount of initial margin on deposit at LCH for interest rate swaps is approximately $20 billion.[211] Therefore, if all remaining interest rate swaps were moved into clearing, approximately $19.2 billion ($20B/0.51 − $20B = 19.2B) would have to be posted in initial margin.

Similarly, the initial margin related to CDS currently on deposit at CME, ICE Clear Credit, and ICE Clear Europe is approximately $21.4 billion.[212] This amount includes initial margin based on both index-based CDS and single-name CDS positions. BIS data indicates that approximately 36.6% of the CDS market comprises index-based CDS.[213] In the NPRM, the Commission noted that if it is assumed that approximately 36.6% of the overall portfolio-based CDS margin (*i.e.,* CDS indices and single-name CDS margined together) currently held by DCOs for CDS positions is related to index-based CDS, and then add any margin held by DCOs attributable solely to index-based CDS, it can be estimated that approximately $9.0 billion in margin currently held by those DCOs is related to index-based CDS. ISDA data indicates that 14.5% of the index-based CDS market is currently cleared.[214] Therefore, the Commission noted in the NPRM that if the entire index-based CDS market moved into clearing, $53 billion ($9.0B/0.145 − $9.0 = $53B) in initial margin would have to be posted at DCOs.

Both of the above estimates assume that additional interest rate swaps brought into clearing would have similar margin requirements per unit of notional amount to those interest rate swaps that are already in clearing, and assumes that additional CDS brought into clearing would have similar margin requirements per unit of notional amount to those CDS that are already being cleared. These assumptions, in turn, assume similar levels of liquidity, compression, netting, and similar tenors for the swaps that are currently cleared and those that are not. While the Commission recognizes that these factors are unlikely to be identical among both groups of products, adequate information to quantify the impact of each of these possible differences between the two groups of swaps on the amount of additional collateral that would have to be posted is not available.

In any case, the Commission noted that it is probable that the estimates in the NPRM significantly overstate the amount of additional capital that would be posted for a number of reasons described below. First, these estimates are based upon the assumption that every interest rate swap and index-based CDS not currently cleared is brought into clearing as a result of the Commission's determinations herein. However, in this adopting release the Commission has set forth clearing requirements only for certain classes of interest rate swaps and CDS, and not for all interest rate swaps and CDS. Therefore, there will still be certain types of interest rate swaps, such as those related to the thirteen additional currencies cleared by LCH, that are not required to be cleared. Moreover, the clearing requirement will apply only to new swap transactions[215] whereas market estimates include legacy transactions. In addition, these estimates assume that no additional voluntary clearing would be taking place in the absence of the Commission's determinations. The Commission also observes that, to the extent that portfolio margining for products such as CDS is expanded to all market participants, it is likely to reduce the additional margin that is required. In some instances, these margin reductions for well-balanced portfolios could be significant.

In addition, non-financial entities entering into swaps for the purpose of hedging or mitigating commercial risk are not required to use clearing under section 2(h)(7) of the CEA. As a consequence, many entities will not be required to clear, even when entering into interest rate swaps or CDS that are otherwise required to be cleared. Third, some interest rate swaps and CDS involve cross border transactions to which the Commission's clearing requirement will not apply.[216] Fourth, collateral is already posted with respect to many non-cleared interest rate swaps and CDS. ISDA conducted a recent survey which reported that 93.4% of all trades involving credit derivatives, and 78.1% of all trades involving fixed income derivatives are subject to collateral agreements.[217] Moreover, although the Commission cannot verify the accuracy of the estimate, ISDA estimated that the aggregate amount of collateral in circulation in the non-cleared OTC derivatives market at the end of 2011 was approximately $3.6 trillion.[218]

[210] The numbers calculated above may either over-estimate or under-estimate the amount of additional initial margin that would need to be posted under the conservative assumptions stated above. For instance, differences in the amount of netting that is possible within portfolios currently being cleared versus those not currently being cleared could have a significant impact on the amount of additional margin that is required to be posted. Other factors such as differences in liquidity among swaps currently being cleared and those not being cleared could also impact the amount of additional margin that is posted.

[211] The total amount of initial margin on deposit at CME for interest rate swaps is $5 billion, but for purposes of this estimate, the Commission is not including that amount.

[212] The total amount of initial margin on deposit only includes those amounts reported to the Commission by registered DCOs. Other clearinghouses, such as LCH.Clearnet.SA, clear the indices included in the proposed determination, however, the relative size of the open interest in the relevant CDS indices is substantially smaller than each of the DCOs included in this calculation.

[213] BIS estimates that the gross notional value of outstanding CDS contracts is $28.6 trillion, and that $10.5 trillion of that is index related CDS. *See* BIS data, available at *http://www.bis.org/statistics/otcder/dt21.pdf.*

[214] In the NPRM, the Commission noted that ISDA has estimated that 14.5% of the index-based CDS market is currently being cleared, whereas the total outstanding notional at CME, ICE Clear Europe, and ICE Credit represents approximately 7.5% of the global index-based CDS market estimated by BIS. Such a discrepancy would be expected if one or more of the following occurred: (1) If ISDA overestimated the percentage of the index-based CDS that is currently being cleared; (2) if BIS overestimated the size of the global index-based swap market; (3) if a significant amount of compression occurs as index-based CDS are moved into clearing; and/or (4) if a significant portion of the cleared index-based CDS market is held at clearinghouses other than CME, ICE Clear Europe, and ICE Clear Credit. The Commission noted in the NPRM that it believes that the compression of CDS positions moving into clearing is the most likely explanation and therefore used the ISDA estimate.

[215] As well as, applying to swaps subject to a change in ownership, as explained above in Section III.D.

[216] Cross-Border Application of Certain Swaps Provisions in the Commodity Exchange Act, 77 FR 41214 (July 12, 2012).

[217] *See* ISDA Margin Survey 2012, at 15, available at *http://www2.isda.org/functional-areas/research/surveys/margin-surveys/.* Although it is unclear exactly how many of the derivatives covered by this survey are swaps, it is reasonable to assume that a large part of them are.

[218] This estimate, however, does not adjust for double counting of collateral assets. The same survey reports that as much as 91.1% of cash used as collateral and 43.8% of securities used as collateral are being reused, and therefore are counted two or more times in the ISDA survey. *See* ISDA Margin Survey 2012, at 20 and 11, respectively.

2. Comments Received in Response to NPRM Consideration of Costs and Benefits

In the NPRM, the Commission requested comment regarding the total amount of additional collateral that would be required due to the proposed clearing requirement. In particular, the Commission sought quantifiable data and analysis.[219] No commenter addressed the quantitative approach laid out by the Commission in the NPRM. Nor did any commenter provide quantifiable data and analysis to support or refute such analysis. Citadel stated that the Commission's determination is justified on a cost-benefit basis, but did not address the costs of collateral directly. FIA noted that the NPRM's cost-benefit discussion ''is among the more thoughtful and comprehensive the Commission has ever prepared,'' but did not address the costs of collateral, fees, or other costs.

3. Additional Research Reviewed by the Commission

Despite the lack of feedback from commenters regarding the costs of collateral, the Commission continued to research market and academic literature in the public domain for additional data. The Commission identified and obtained two relevant papers. These papers are presented as additional informative background regarding the costs of mandatory clearing. The Commission has reviewed, but has not been able to verify, the conclusions reached in these papers.

In a recent research note, Morgan Stanley estimated the global increase in initial margin for interest rate swaps trades as a result of the swap clearing requirements.[220] Its ''bull case'' figure of $20 billion is largely consistent with the Commission's estimate of $19.2 billion in the NPRM calculated above, though its methodology is different. Morgan Stanley obtained this figure in several steps. First, it considered two main groups of interest rate swaps traders: dealers and buy-side investors, which Morgan Stanley believes have interest rate swaps with notional values of approximately $339 trillion and $89 trillion, respectively, outstanding. Next, Morgan Stanley projected that the amount of new interest rate swaps that will be cleared as a percentage of current notional would be 10% for dealers and 80% for buy-side participants, assuming that ''most of the eligible dealer-to-dealer trades are already centrally cleared.'' Finally, Morgan Stanley multiplied the resulting amount of new interest rate swaps that will be cleared for each group of traders by an initial margin to notional ratio that they estimated.[221] Currently, according to Morgan Stanley, ''the aggregate dealer initial margin as a percentage of notional reported by LCH is approximately 0.005%.'' For dealers, the value of 0.00005 was therefore chosen as their initial margin to notional ratio. For buy-side investors, however, Morgan Stanley scaled up LCH's benchmark ratio of 0.00005 by a growth factor of 5 to ''[capture] the extent to which buy-side portfolios are less diversified than dealers and may enjoy less netting efficiencies.'' Overall, the report argued, dealers and buy-side participants should expect their aggregate initial margin to increase by $2 billion ($339,000B × 10% × 0.00005 ≈ $2B) and $18 billion ($89,000B × 80% × 0.00005 × 5 ≈ $18B), respectively, resulting in a total estimate of $20 billion in additional margin for the bull case scenario. By scaling up LCH's benchmark ratio by a growth factor in the range between 10–20 for each group of investors, Morgan Stanley further obtained a ''base case'' figure of $480 billion and a ''bear case'' figure of $1.3 trillion. The difference between the Commission's estimate and Morgan Stanley's base case figure or bear case figure can largely be attributed to the following: the Commission used LCH's current *overall* initial margin to notional ratio in its calculations, whereas Morgan Stanley used LCH's current *dealer* initial margin to notional ratio; more importantly, the Commission made the simplifying assumption that the initial margin to notional ratio will stay more or less constant, whereas Morgan Stanley scaled up its benchmark ratio by a growth factor in a range between 10–20 based on its ''discussions with clearing and banking industry professionals and estimates made by [BIS]'' as well as its internal estimates.[222] Putting aside the growth factor effect, it is worth emphasizing that Morgan Stanley's estimates refer to the *global* increase in initial margin, which may potentially be much larger than the additional amount of initial margin required for those entities under the Commission's jurisdiction.

Also, the Commission notes that in Morgan Stanley's calculations, the additional collateral required for buy-side swaps represents the vast majority of the additional collateral required in each scenario (approximately 95%, 74%, and 81% of the total additional capital required for the ''bull case,'' ''base case,'' and ''bear case,'' respectively). A critical assumption driving each of these calculations is that swaps with 80% of the total buy-side notional amount are moved into clearing as a result of the mandate. However, the Commission believes this assumption may be high in light of the end-user exception, which includes an exemption for small financial institutions with less than $10 billion in assets.[223] Adjusting this assumption downward would result in dramatic reductions in Morgan Stanley's calculations regarding the amount of additional collateral that may be required as a result of the mandate.

TABB Group has also conducted a study recently that estimated the global ''margin shortfall'' (*i.e.,* the additional amount of initial margin that will be required) for all OTC swaps due to clearing requirements and anticipated margin requirements for uncleared swaps.[224] According to their model, the total amount of margin that will be required for both cleared and uncleared swaps is estimated to be between $2.9 trillion to $4.1 trillion, depending on the degree of netting for each type of traders. Further, they estimate that $1.34 trillion of margin is already posted for all OTC swaps, leaving an additional $1.56–2.76 trillion in margin that would need to be posted for all swaps, including both cleared and uncleared positions. The table below summarizes TABB Group's margin estimates by trader type.

[219] 77 FR at 47214.

[220] *See* Morgan Stanley, Morgan Stanley Research, ''Swap Central Clearing: What is the Impact on Collateral?'' (August 2012).

[221] This ratio is the initial margin divided by the notional outstanding.

[222] In particular, Morgan Stanley assumed that ''dealer [initial margin] may grow over time due to higher CCP collateral requirements and counterparty diversification regulations.''

[223] *See* End User Exception to the Clearing Requirement for Swaps, 77 FR 42560 (July 19, 2012).

[224] *See* TABB Group, ''The New Global Risk Transfer Market: Transformation and the Status Quo,'' (Sept. 2012).

TABLE 6—MARGIN ESTIMATES BY TRADER TYPE IN BILLIONS OF U.S. DOLLARS[225]

Trader type	Gross notional	Gross margin (1.5% of notional)	Estimated netting benefit	Estimated margin posted
Dealers with CCP	248,561	3,728	3,710 (99.5%)	19
Other Dealers	305,624	4,584	1,605–2,521 (35–55%)	2,063–2,980
Financial Institutions	59,964	899	225–405 (25–45%)	495–675
Non-Financial End Users	33,851	508	76–178 (15–35%)	330–432
Others	60,000			
Total				2,906–4,105

As shown in the table, if the amount for non-financial end-users is excluded, then the margin shortfall will be adjusted down to $1.23–2.33 trillion. Like the Commission, the TABB Group considered all the OTC swaps, some of which are not covered by the clearing requirement.

The TABB Group estimates are considerably higher than those of the Commission and of Morgan Stanley largely because of different estimates about what amount of netting will be possible for swaps not currently being cleared, and in particular, for the swaps between dealers that do not involve a CCP.

4. Collateral Costs and Costs of Capital

Given the increased collateral demands that required clearing of interest rate swaps and CDS is likely to bring, there will be corresponding demand for capital. To calculate the additional collateral cost to market participants, the Commission in the NPRM estimated the difference between the cost of capital for the additional collateral and the returns on that capital. Although no comments discussed this issue in comments on the NPRM, the Commission notes that in comments regarding other Commission rules, commenters have sometimes taken the view that the difference between the cost and returns on capital for funds that are used as collateral is substantial.

The Commission described a comment on behalf of the Working Group of Commercial Energy Firms in the NPRM. In this comment, an economic consulting firm, NERA, used an estimate of 13.08% for the pre-tax weighted average cost of capital for the firm, and an estimate of 3.49% for the pre-tax yield on collateral, for a difference as 9.59% which NERA used as the net pre-tax cost of collateral.[226] However, as noted in the NPRM, these estimates use the borrowing costs for the entire firm, but only consider the returns on capital for one part of the firm, when determining the spread between the two.[227] The result is an over-stated difference, and therefore a higher cost associated with collateral than would result if the costs of capital and returns of capital were compared on a consistent basis.[228]

However, as the Commission noted in the NPRM, this cost is not only likely overstated, for the reasons mentioned above, but it also may not be a new cost. Rather, it is a displacement of a cost that is embedded in uncleared, uncollateralized (or under-collateralized) swaps. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty, whether the counterparty is a DCO, swap dealer, or other market participant. When a market participant faces the DCO, the DCO accounts for that counterparty risk by requiring collateral to be posted, and the cost of capital for the collateral is part of the cost that is necessary in order to maintain the swap position. When a market participant faces a dealer or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps. It can be shown that the cash flows of an uncollateralized swap (*i.e.,* a swap with an implicit line of credit) are, over time, substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit.[229] Moreover, because the counterparty credit risk created by the implicit line of credit is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.[230] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared does not introduce an additional cost, but rather takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit. This observation applies to capital costs associated with both initial margin and variation margin.

The Commission received no comment regarding the costs of collateral it presented in the NPRM.

5. Regulatory Capital Implications

Another potential impact of the new clearing requirement that the Commission described in the NPRM may result from the fact that financial institutions are required to hold additional capital with respect to their swap positions pursuant to prudential regulatory capital requirements. Basel III standards are designed to incentivize central clearing of derivatives by applying a lower capital weighting to

[225] *Id.*

[226] The NERA study is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50037* and their comments defending their cost of capital are available in their letter at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=57015.*

[227] Moreover, according to Morgan Stanley's research note cited above, many dealers and buy-side investors currently hold enough unencumbered collateral to meet at least part of the incremental initial margin requirements. In other words, each of these entities will need to raise only a portion of the additional capital required.

[228] This aspect of the NERA study has been described in greater detail by MIT professors John Parsons and Antonio Mello, available at *http://bettingthebusiness.com/2012/01/22/phantom-costs-to-the-swap-dealer-designation-and-otc-reform/* and *http://bettingthebusiness.com/2012/03/19/nera-doubles-down/.*

[229] Antonio S. Mello, and John E. Parsons, ''Margins, Liquidity, and the Cost of Hedging,'' MIT Center for Energy and Environmental Policy Research, May 2012.

[230] *See id.* at 12; Mello and Parsons state in their paper, ''Hedging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.'' The paper goes on to demonstrate that, ''To a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.'' *Id.* at 15–16.

them than for similar uncleared derivatives positions.[231] Moreover, bilateral margining regulations are currently being developed by the Commission and U.S. prudential regulators that will subject uncleared swaps entered into by swap dealers and major swap participants to increased margin requirements in the near future.[232] Therefore, the Commission expects that, all things being equal, the capital that certain financial institutions are required to hold is likely to be reduced as a consequence of their increased use of swap clearing.

The Commission received no comment regarding the regulatory capital discussion it presented in the NPRM.

6. Operational Issues Related to Collateralization

The Commission also discussed in the NPRM the operational costs that may result from the collateral requirements that apply to the clearing requirement. With uncleared swaps, the Commission noted, counterparties may agree not to collect variation margin until certain thresholds of exposure are reached, thus reducing or perhaps entirely eliminating the need to exchange variation margin as exposure changes. DCOs, on the other hand, collect and pay variation margin on a daily basis and sometimes more frequently. As a consequence, more required clearing may increase certain operational costs associated with moving variation margin to and from the DCO. On the other hand, increased clearing is also likely to lead to benefits from reduced operational costs related to valuation disputes, as parties to cleared swaps agree to abide by the DCO's valuation procedures. To the extent that the requirement to clear the types of swaps covered by the new clearing requirement leads to increased use of clearing, these costs and benefits are likely to result.

The Commission received no comment regarding the operational costs of collateral discussion it offered in the NPRM.

7. Guaranty Fund Contribution as a Collateral Cost

As explained in the NPRM, increases in clearing as a result of the clearing requirement also may result in additional costs for clearing members in the form of guaranty fund contributions. However, the Commission noted, it may be that increased clearing of swaps would decrease guaranty fund contributions for certain clearing members. Market participants that currently transact swaps bilaterally, and do not clear such swaps, must either become clearing members of an eligible DCO or submit such swaps for clearing through an existing clearing member of an eligible DCO, once the clearing requirement applies to such swaps. A party that chooses to become a clearing member of a DCO must make a guaranty fund contribution based on the risk that its positions pose to the DCO. A party that chooses to clear swaps through an existing clearing member may have a share of the clearing member's guaranty fund contribution passed along to it in the form of fees. While the addition of new clearing members and new customers for existing clearing members may result in existing clearing members experiencing an increase in their guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

The Commission received no comment regarding the guaranty fund costs discussion it presented in the NPRM.

d. Benefits of Clearing

In the NPRM, the Commission also described the benefits of swap clearing, which in general, are significant. Thus, to the extent that the new clearing requirement for certain classes of interest rate swaps and CDS leads to increased use of clearing, these benefits are likely to result. As is the case for the costs noted above, it is difficult to predict the precise extent to which the use of clearing will increase as a result of the new requirement, and therefore the benefits of the requirement cannot be precisely quantified. But the Commission believes that the benefits of increased clearing resulting from this requirement will be significant, because the classes of swaps required to be cleared represent a substantial portion of the total swap markets.

Currently outstanding interest rate swaps and CDS indices represent about 77.8% and 1.6%, respectively, of the total global swaps market, when measured by notional amount.[233] As noted above, the new clearing requirement requires that only certain classes of interest rate swaps and CDS indices be cleared, but such classes likely represent the most common swaps within those overall asset classes, and therefore are likely to comprise a relatively large portion of those asset classes. The Commission reiterates the conclusion stated in the NPRM, which is that by requiring these particular swaps to be cleared, the benefits of clearing are expected to be realized across a relatively large portion of the market.

The new clearing requirement that swaps within certain classes be cleared is expected to increase the number of swaps in which market participants will face a DCO, and therefore, will face a highly creditworthy counterparty. DCOs are some of the most creditworthy counterparties in the swap market because, as explained above, they have at their disposal a number of risk management tools that enable them to manage counterparty risk effectively. Those tools include contractual rights that enable them to use margin to manage current and potential future exposure, to close out and transfer defaulting positions while minimizing losses that result from such defaults, and to protect solvency during the default of one or more members through a waterfall of financial resources from which they can draw, as outlined above. Also, clearing protects swap customers from the risk of having to share losses in the event of the default of another clearing member.

Under § 50.2(a) of this adopting release, swaps meeting the specifications of the classes of swaps that are required to be cleared must be submitted to clearing ''as soon as technologically practicable after execution, but in any event by the end of the day of execution.'' [234] This conforms to the requirements established in the recently finalized rule

[231] *See* Basel Committee on Banking Supervision reforms—Basel III, available at *http://www.bis.org/bcbs/basel3/b3summarytable.pdf* (indicating that Basel III reforms will create capital incentives for banks to use central counterparties for derivatives).

[232] The Commission's proposed is Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732 (Apr. 28, 2011); and the U.S. prudential regulators proposed a similar requirement, Margin and Capital Requirements for Covered Swap Entities, 76 FR 27564 (May 11, 2011).

[233] BIS data, December 2011, available at *http://www.bis.org/statistics/derstats.htm.* As explained above, the Commission observes that while CDS accounts for a smaller portion of the total swaps market, its unique risk profile involving jump-to-default risk contributed to the Commission's decision to include it in among the first clearing determinations.

[234] *See* § 50.2(a) (setting for the timeframe for submission of swaps to DCOs).

regarding timing of acceptance for clearing,[235] which is designed to promote rapid submission of these swaps for clearing and reduce the unnecessary counterparty risk that can develop between the time of execution and submission to clearing.[236]

As it noted in the NPRM, the Commission expects that the requirement for rapid submission, processing, and acceptance or rejection of swaps for clearing will be beneficial in several respects. It is important to note that when two parties enter into a bilateral swap with the intention of clearing it, each party bears counterparty risk until the swap is cleared. Once the swap is cleared, the clearinghouse becomes the counterparty to each of the original parties, which minimizes and standardizes counterparty risk.

Where swaps of the type covered by the new clearing requirement are not executed on an exchange, the requirements of § 50.2(a) should significantly reduce the amount of time needed to process them. Although costs associated with latency-period counterparty credit risk cannot be completely eliminated in this context, the rules will reduce the need to discriminate among potential counterparties in executing off-exchange swaps, as well as the potential costs associated with swaps that are rejected from clearing. By reducing the counterparty risk that could otherwise develop during the latency period, these rules promote a market in which all eligible market participants have access to counterparties willing to trade on terms that approximate the best available terms in the market. This is likely to improve price discovery and promote market integrity.

Another benefit of the new clearing requirement is the mitigation of systemic risk. Counterparty risk readily develops into systemic risk in an interconnected financial system especially in times of financial stress due to various types of contagion effects.[237] By ensuring that outstanding potential future and current exposures are collateralized in a timely fashion for more swaps, this new clearing requirement contributes to the mitigation of systemic risk.

The Commission's consideration of the effect on the mitigation of systemic risk is generally supported by comments, which provided general observations regarding the mitigation of systemic risk. Citadel and Eris Exchange both stated that implementing the clearing requirement is a significant milestone toward ''achieving the Dodd-Frank Act's objectives of reducing interconnectedness, mitigating systemic risk, increasing transparency, and promoting competition in the swaps market.'' Freddie Mac commented that it ''supports the Commission's goal to reduce systemic risk through central clearing of swaps where appropriate.'' On the other hand, ISDA urged the Commission to consider the argument that ''clearing involves a greater centralization of risk than the over-the counter markets ever did.'' ISDA also questioned the risk-mitigating aspects of central clearing as contrasted with the new regulatory regime for uncleared swaps. In response to ISDA's comment, the Commission observes that while the regime for bilateral, uncleared swaps will be greatly improved after full implementation of the Dodd-Frank Act reforms, central clearing provides for certain risk management features that cannot be replicated on a bilateral basis. To name just one critical distinction, a clearinghouse addresses the tail risk of open positions through mutualization. Each clearing member must contribute to a default fund that protects the system as a whole. Also, recent experience indicates that all DCOs were able to withstand the 2008 financial crisis in a relatively sound manner.[238]

Regarding competition, Markit stated that the new clearing requirement might lower barriers to entry in the index provider market ''because new indices would not necessarily be subject to the clearing mandate, which can be costly.'' Citadel commented that the framework established by the Commission promotes competition among swap dealers, as ''counterparty credit risk no longer features as a consideration in the selection of executive counterparties.''

In addition, § 50.10 and related guidance provides market participants with a useful framework for behavior under the requirements of section 2(h), which will promote the benefits of swap clearing without introducing uncertainty regarding market behavior. Activity conducted principally for a legitimate business purpose, absent other indicia of evasion or abuse, would not constitute a violation of § 50.10 as described in the Commission's interpretation.

D. Consideration of Alternative Swap Classes for Clearing Determinations

The Commission's determination to require initially the clearing of certain CDS and interest rate swaps is a function of both the market importance of these products and the fact that they already are widely cleared. In order to move the largest number of swaps to required clearing in its initial determination, the Commission continues to believe that it is prudent to focus on swaps that are widely used and for which there is already a blueprint for clearing and appropriate risk management. CDS and interest rate swaps that match these factors are therefore well suited for required cleared.

As noted in the NPRM and discussed above, interest rate swaps with a notional amount of $504 trillion are currently outstanding—the highest proportion of the $648 trillion global swaps market of any class of swaps.[239] CDS indices with a notional amount of about $10.4 trillion are currently outstanding.[240] While CDS indices do not have as prominent a share of the entire swaps market as interest rate swaps, uncleared CDS is capable of having a sizeable market impact, as it did during the 2008 financial crisis. In addition, many of the swaps within each of the classes that will now be subject to required clearing are already cleared by one or more clearinghouses. LCH claims to clear interest rate swaps with a notional amount of about $284 trillion—meaning that, in notional terms, LCH represents that they clear just over 50% of the interest rate swap market.[241] The swap market has made a smooth transition into clearing CDS on its own initiative. As a result, DCOs, FCMs, and many market participants

[235] *See* Client Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 (Apr. 9, 2012).

[236] The Commission notes that if a market participant executed a swap that is required to be cleared on a SEF or DCM, then that market participant will be deemed to have met their obligation to submit the swap to a DCO because of the straight-through processing rules previously adopted by the Commission.

[237] For a comprehensive discussion of the various types of contagion effects in times of financial stress, *see* Brunnermeier, M., A. Crocket, C. Goodhart, A. Persaud, and H. Shin: ''The Fundamental Principles of Financial Regulation,'' (2009), available at *http://www.princeton.edu/~markus/research/papers/Geneva11.pdf.*

[238] No DCO required government assistance, and all DCOs were able to manage their open positions in both swaps and futures. Even difficult default situations were handled in an orderly fashion. For example, during the Lehman Brothers' bankruptcy in September 2008, LCH was able to manage the default of Lehman's significant swap portfolio. *See* 77 FR at 47188 and LCH IRS submission, at 4 (discussing LCH's management of the Lehman Brothers' bankruptcy in September 2008, where upon Lehman's default, LCH needed to risk manage a portfolio of approximately 66,000 interest rate swaps, which it hedged with approximately 100 new swap trades in less than five days and only used approximately 35% of the initial margin Lehman had posted).

[239] BIS data, June 2011, available at *http://www.bis.org/publ/otc_hy1111.pdf.*

[240] *See id.*

[241] *See id.*

already have experience clearing the types of swaps that will be subject to required clearing. The Commission expects, therefore, that DCOs and FCMs are equipped to handle the increases in volume and outstanding notional amount in these swaps that is likely to be cleared as the result of this rule. Because of the wide use of these swaps and their importance to the market, and because these swaps are already cleared safely, the Commission continues to believe it is reasonable to initially subject certain types of interest rate swaps and CDS to the clearing requirement.

In reviewing the swap submissions provided by DCOs, the Commission decided to classify swaps according to certain key specifications for CDS and interest rate swaps. These specifications inform whether a particular swap falls within one of the classes of swaps that the Commission has determined are required to be cleared. The two classes of CDS that are required to be cleared are (1) U.S. dollar-denominated CDS covering North America corporate credits and (2) euro-denominated CDS referencing European corporate obligations. The four classes of interest rate swaps required to be cleared are (1) fixed-to-floating swaps, (2) basis swaps, (3) OIS, and (4) FRAs. In formulating each of the six classes under this adopting release, the Commission considered a number of alternatives.

Regarding CDS, the Commission outlined three key specifications comprising (1) region and nature of reference entity, (2) the nature of the CDS itself, and (3) tenor. Each of these specifications will assist market participants in determining whether a swap falls within the CDS classes of swaps required to be cleared. For the first, a distinguishing characteristic is whether the reference entity is in North American or European and whether it is one of Markit's CDX.NA.IG, CDX.NA.HY, iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe High Volatility indices. The second key specification relates to whether the CDS is tranched or untranched. The classes that are required to be cleared include only untranched CDS where the contract covers the entire index loss distribution of the index and settlement is not linked to a specified number of defaults. Tranched swaps, first- or ''Nth'' to-default, options, or any other product variations on these indices are excluded from these classes. Finally, the third key specification entails whether a swap falls within a tenor, specific to an index, that is required to be cleared. The Commission has determined that each of the 3-, 5-, 7-, and 10-year tenors be included within the class of swaps subject to the clearing requirement determination for CDX.NA.IG; the 5-year tenor be included for CDX.NA.HY; each of the 5- and 10-year for iTraxx Europe; the 5-year for iTraxx Europe Crossover; and, the 5-year for iTraxx Europe High Volatility. In addition, it should be noted that only certain series will be viewed as required to be cleared.

The Commission considered a number of possible alternatives. First, the Commission could have used a narrower or broader group of reference entities. For example, the Commission has not included the CDX.NA.IG.HVOL within the North American swap class, but it considered doing so. The Commission concluded that while doing so would have increased the number of swaps required to be cleared, there is not sufficient liquidity to justify required clearing at this time given that the recent series of CDX.NA.IG.HVOL has not been cleared by ICE (and is not offered at all by CME).

Several commenters raised issues regarding the operational capabilities of clearinghouses to manage the clearing of iTraxx CDS indices for customers.[242] More specifically, they pointed out that no registered DCO currently offers customer clearing for iTraxx and expressed concerns about the ability of clearinghouses to manage restructuring credit events applicable to iTraxx. On the other hand, Citadel and ICE both supported the inclusion of iTraxx CDS indices in the clearing requirement. In particular, ICE stated that ICE Clear Europe has begun the process of pursuing regulatory approval for clearing of iTraxx and that ICE Clear Credit will do the same; moreover, ICE said that it has worked closely with market participants and DTCC to develop an industry wide solution for processing a restructuring credit event.

Having considered the different views, the Commission is including the iTraxx class of CDS as proposed. The Commission believes that the uncertainty surrounding the implementation of customer clearing for iTraxx will be resolved within the next few months, which will allow this standard and liquid class of CDS to be cleared. If no eligible DCO offers iTraxx for client clearing, compliance with the required clearing of iTraxx will commence sixty days after the date on which iTraxx is first offered for client clearing by an eligible DCO.

The Commission also considered whether it could include tranched CDS in the clearing requirement. The Commission recognized in the NPRM that there is a significant market for tranched swaps using the indices. In these transactions, parties to the CDS contract agree to address only a certain range of losses along the entire loss distribution curve. Other swaps such as first or ''Nth'' to default baskets, and options, also exist on the indices. However, these swaps are not being cleared currently and were not submitted by a DCO for consideration under § 39.5. As a result, including tranched CDS was not a viable alternative for this determination.

AFR noted that requiring clearing of only untranched CDS indices may give rise to arbitrage opportunities, as the payoff properties desired from an index can be closely replicated by trading tranches of that index. The Commission recognizes this concern and will take into account the possibility of arbitrage opportunities in its future reviews of tranched CDS for clearing determination.

Regarding tenor, the Commission could have included more of those offered within the classes of swaps required to be cleared. For example, the Commission noted in the NPRM that the CDX.NA.IG has 1- and 2-year tenors and the CDX.NA.HY, has 3-, 7-, and 10-year tenors that have not been included among the specified tenors. The iTraxx Europe has 3- and 7-year tenors and the Crossover and High Volatility each have 3-, 7-, and 10-year tenors that have not been included. In addition, the Commission could have included all series of active indices. The Commission's concern, regarding both tenors and series, is that certain tenors and series have lower liquidity and may be difficult for a DCO to adequately risk manage, which is reflected in the fact that those tenors and series are not currently cleared by any DCO. While including more tenors and series would have increased the volume of swaps required to be cleared to some degree, the Commission concluded that doing so could raise costs for DCOs and other market participants and be less desirable relative to the factors established in § 39.5.

AFR commented that both the 1- and 2-year tenors of the CDX.NA.IG should be included in the clearing requirement. It is concerned that ''market participants might shift to those tenors to avoid mandatory clearing [of the longer tenors].'' The Commission notes that no DCO currently clears the 1- or 2-year tenor of CDX.NA.IG, making the clearing of either swap infeasible. However, the Commission recognizes that requiring mandatory clearing of these shorter tenors may prevent

[242] ISDA, FIA, MFA, and D.E. Shaw.

arbitrage opportunities if they generate sufficient trading volumes in the future.

With regard to interest rate swaps, as mentioned above, the Commission is finalizing a clearing requirement for four classes of interest rate swaps: Fixed-to-floating swaps, basis swaps, OIS, and FRAs. Within those four classes, there are three affirmative specifications for each class ((i) Currency in which the notional and payment amounts are specified, (ii) rates referenced for each leg of the swap, and (iii) stated termination date of the swap). There are also three ''negative'' specifications for each class ((i) No optionality (as specified by the DCOs); (ii) no dual currencies; and (iii) no unknown notional amounts). The Commission considered whether to establish clearing requirements on a product-by-product basis. As noted in the NPRM, such a determination would need to identify the multitude of legal specifications of each product that would be subject to the clearing requirement. Although the industry uses standardized definitions and conventions, the product descriptions would be lengthy and require counterparties to compare all of the legal terms of their particular swap against the terms of the many different swaps that would be included in a clearing requirement. The Commission continues to believe that for interest rate swaps, a product-by-product determination would be unnecessarily burdensome for market participants in trying to assess whether each swap transaction is subject to the requirement. A class-based approach allows market participants to determine quickly whether they need to submit their swap to a DCO for clearing by checking initially whether the swap has the basic specifications that define each class subject to the clearing requirement.

As an alternative to the classes selected, LCH recommended in its IRS submission that the Commission use the following specifications to classify interest rate swaps for purposes of making a clearing determination: (i) Swap class (*i.e.,* what the two legs of the swap are (fixed-to-floating, basis, OIS, etc.)); (ii) floating rate definitions used; (iii) the currency designated for swap calculations and payments; (iv) stated final term of the swap (also known as maturity); (v) notional structure over the life of the swap (constant, amortizing, roller coaster, etc.); (vi) floating rate frequency; (vii) whether optionality is included; and (viii) whether a single currency or more than one currency is used for denominating payments and notional amount. In its submission, CME recommended a clearing determination for all non-option interest rate swaps denominated in a currency cleared by any qualified DCO.

The Commission noted in the NPRM that these alternative specifications fall into two general categories: specifications that are commonly used to address mechanical issues for most swaps, and specifications that are less common and address idiosyncratic issues related to the particular needs of a counterparty. Examples of the latter are special representations added to address particular legal issues, unique termination events, special fees, and conditions tied to events specific to the parties. None of the DCOs clear interest rate swaps with terms in the second group. While such specifications may affect the value of the swap, such specifications are not, generally speaking, fundamental to determining the economic result the parties are trying to achieve.[243] The Commission is finalizing the three affirmative specifications described above because it believes that they are fundamental specifications used by counterparties to determine the economic result of a swap transaction for each party.[244]

The Commission also noted in the NPRM that it could have not included the negative specifications for interest rate swaps, which would have had the potential effect of including more interest rate swaps within the universe of those required to be cleared. However, the Commission continues to believe that swaps with optionality (such as swaptions or swaps with embedded options), multiple currency swaps, and swaps with notional amounts that are not specified at the time of execution raise concerns regarding adequate pricing measures and consistency across swap contracts. Additionally, at this time, no DCO is offering them for clearing.

Another alternative considered by the Commission and discussed in the NPRM was that of stating the clearing requirement in terms of a particular type of swap, rather than using broad characteristics to describe the type of swaps for which clearing would be required. For example, rather than requiring that all interest rate swaps that meet the six specifications in § 50.4(a) be cleared, the Commission noted in the NPRM that the rule could have specified that only certain sub-types of those interest rate swaps—such as all such interest rate swaps with a term of five years—are required to be cleared. Such an approach might permit the Commission to account for variation in liquidity and outstanding notional values among different sub-types of swap, and thereby focus the clearing requirement on very particular swaps to account for these differences within the same general class. Also, generally speaking, limiting the clearing requirement to fewer swaps could reduce some costs associated with clearing.

However, this advantage was weighed against an important disadvantage of this approach. A highly focused clearing requirement could increase the ability for market participants to replicate the economic results of a swap that is required to be cleared by substituting a swap not required to be cleared; this greater latitude for clearing avoidance, in turn, could increase systemic risk and dampen the beneficial effects of clearing noted above.[245] Under the approach proposed by the Commission, all swaps that fall within identified classes are covered by the clearing requirement, provided an eligible DCO offers the swap for clearing, which reduces the risk of such avoidance and the associated reduction of benefits. Moreover, stating the clearing requirement in more general terms reduces the costs associated with determining whether or not a particular swap is subject to the clearing requirement.

Numerous commenters expressed support for the Commission's specifications determination.[246] CME stated that ''the Commission has struck an appropriate balance for the initial slate of classes subject to the requirement.'' LCH commented that ''the Commission's decision to classify interest rate swaps based on six principle swap specifications * * * is sound.'' Citadel stated that the Commission's class designation approach ''reflects the risk management approach utilized across the industry, and most importantly by DCOs'' to

[243] As noted in Section II.E above, mechanical specifications include characteristics such as floating rate reset tenors, reference city for business days, business day convention, and others that have some small impact on valuation but that do not fundamentally alter the economic consequence of the swap for the parties that enter into it.

[244] In a comment, ISDA questioned the Commission's description of mechanical and idiosyncratic factors. In response, the Commission clarified that it is not introducing a new test for interest rate swaps, but was merely setting forth and describing relevant class-defining specifications. *See* Section II.D above for a full discussion.

[245] For instance, in the example noted above, swaps with a term of five years and one day would not be required to be cleared.

[246] AllianceBernstein, R.J. O'Brien, Citadel, Eris Exchange, CME, FIA, D.E. Shaw, Arbor Research, LCH, Knight Capital, Jefferies, Coherence Capital, CRT Capital, Javelin Capital, SDMA, Chris Barnard, and Svenokur.

determine necessary margin and other safeguards.

On the other hand, regarding interest rate swaps, ISDA is concerned that the Commission's class-based approach will impose great burdens and uncertainties in terms of ''the search efforts needed to filter out from among the broad class those specific products that a DCO will accept for clearing.'' The Commission notes that ISDA's concern may not be justified, as CME already has a platform in place that ''provides market participants with a tool to screen a particular swap for eligibility for clearing upon submission of the swap to CME.''

The Commission also considered requiring clearing for all seventeen currencies of interest rate swaps that are currently offered for clearing, but decided instead to require clearing at this time for interest rate swaps in four currencies (EUR, USD, GBP, and JPY). As noted in the NPRM, the Commission recognizes that requiring interest rate swaps in all seventeen currencies submitted by LCH to be cleared would provide the benefit of some incremental reduction in overall counterparty, and thus systemic, risk attendant to clearing a greater portion of interest rate swaps. However, as noted above, the Commission continues to believe that initiating the clearing requirement in a measured manner with respect to interest rate swaps in the four specified currencies familiar to many market participants is the preferable approach at this time because it would give market participants an opportunity to identify and address any operational challenges related to required clearing. Moreover, the currencies included in the required classes constitute approximately 93% of cleared interest rate swaps, which suggests that significant reductions in counterparty risk and gains in systemic protection will be accomplished by limiting the clearing determination to them.[247]

LCH supported the Commission's determination, and recommended that the Commission propose mandatory clearing of swaps denominated in the other 13 currencies once the initial phase of mandatory clearing is well-established. LCH stated that there is ''ample volume and liquidity in swaps denominated in these currencies to support mandatory clearing.'' The Commission will evaluate the benefits of this recommendation against the cost burdens in its future determinations.

Similarly, the Commission considered requiring clearing of all CDS that are currently being cleared, but did not propose to include, in the initial clearing requirement, certain types of CDS that have a less significant role in the current market.[248]

AFR and Chris Barnard both urged the Commission to rapidly designate energy, agriculture and equity swaps for mandatory clearing as well. The Commission reiterates that it will continue to review swap submissions received from DCOs and will issue clearing requirement for other classes of swaps so as to realize the benefits of clearing in a timely manner.

E. Section 15(a) Factors

As noted above, the requirement to clear swaps within the classes of swaps covered by this adopting release is expected to result in increased use of clearing, although it is difficult to quantify the extent of that increase. Thus, this section discusses the expected results from an overall increase in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

i. Protection of Market Participants and the Public

As described above, required clearing of CDS and interest rate swaps resulting from this clearing determination is expected to reduce counterparty credit risk for market participants that will now be required to clear those swaps because they will face the DCO rather than another market participant that lacks the full array of risk management tools that the DCO has at its disposal. This increase in clearing of CDS and interest rate swaps also reduces uncertainty in times of market stress because market participants facing a DCO are less concerned with the impact of such stress on the solvency of their counterparty for cleared trades. Moreover, by reducing uncertainty about counterparty solvency for market participants facing a DCO, the clearing determinations under this adopting release are likely to reduce the risk of contagion if one or more DCO customers or clearing members fails during a time of market stress, which creates benefits for the public.

By requiring clearing of swaps within certain classes, all of which are already available for clearing, the Commission continues to expect, as it stated in the NPRM, that this rule will encourage a smooth transition to clearing by creating an opportunity for market participants to work out challenges related to required clearing of swaps while operating in familiar terrain. More specifically, the DCOs will clear an increased volume of swaps that they already understand and have experience managing. Similarly, FCMs likely will realize increased customer and transaction volume as the result of the requirement, but will not have to simultaneously learn how to operationalize clearing for new types of swaps. Additionally, the experience that current FCMs have with these swaps is likely to benefit customers that are new to swap clearing, as the FCM guides them through initial process of clearing swaps.[249]

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes. These valuation disputes sometimes require several months, or longer, to resolve. Uncollateralized exposure can grow significantly during that time, leaving one of the two parties exposed to counterparty credit risk that was intended to be covered through a collateral agreement. DCOs eliminate, or reduce, valuation disputes for cleared swaps as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants that transact in swaps subject to required clearing.[250]

As far as costs are concerned, market participants that do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. As discussed above, market participants that conduct a limited number of swaps per year will likely be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.

[247] *See* Section II.F above for more thorough discussion of the data.

[248] For instance, the Commission decided not to include CDX.NA.IG.HiVol from the proposed determination given the lack of volume in the current on-the-run and recent off-the-run series. In addition, CME currently does not clear any HiVol contracts, and ICE Clear Credit no longer clears the most recent series.

[249] As discussed in Section II.C and II.E above, DCOs offering clearing for CDS and interest rate swaps have established extensive risk management practices, which focus on the protection of market participants. *See also* Sections II.D and II.F for a discussion of the effect on the mitigation of systemic risk in the CDS market and in the interest rate swaps market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[250] *See* Sections II.D and II.F above for a further discussion of how DCOs obtain adequate pricing data for the CDS and interest rate swaps that they clear. Based on this pricing data, valuation disputes are minimized, if not eliminated for cleared swaps.

ii. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

The Commission continues to expect, as it explained in the NPRM, that increased clearing of the CDS and interest rate swaps subject to this adopting release is expected to reduce uncertainty regarding counterparty credit risk in times of market stress and promote liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses from exiting positions effectively when necessary in order to manage risk during a time of market stress.

In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being run through a smaller number of clearinghouses, clearing likely facilitates increased netting. This netting effect reduces operational risk and may reduce the amount of collateral that a party must post or pay in terms of initial and variation margin.

As discussed in Sections II.D and II.F above, in setting forth this new clearing requirement, the Commission took into account a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the NPRM and the discussion above includes an assessment of whether the DCOs clearing CDS and interest rate swaps have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear CDS and interest rate swaps on terms that are consistent with the material terms and trading conventions on which the contract is then traded. The Commission also considered the financial resources of DCOs to handle additional clearing, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.[251]

As discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring the certain types of swaps subject to this clearing determination to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets.

In setting forth a clearing requirement for both CDS and interest rate swaps, the Commission considered the effect on competition, including appropriate fees and charges applied to clearing. As discussed in more detail in Sections II.D and II.F above, there are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in a anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry-opportunity for competitors.

As far as costs are concerned, the markets for some swaps within the classes that are required to be cleared may be less liquid than others. All other things being equal, swaps for which the markets are less liquid have the potential to develop larger current uncollateralized exposures after a default on a cleared position, and therefore will require posting of relatively greater amounts of initial margin.

iii. Price Discovery

As the Commission noted in the NPRM, clearing of CDS and interest rate swaps subject to this new clearing requirement is likely to encourage better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.[252]

As discussed in Sections II.D and II.F above, DCOs obtain adequate pricing data for the CDS and interest rate swaps that they clear. Each DCO establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that the cornerstone of its risk management regime is as sound as possible.

iv. Sound Risk Management Practices

If a firm enters into swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures and unhedged positions. As explained in the NPRM and stated above, when a swap is cleared, the DCO becomes the counterparty facing each of the two original counterparties to the swap. This standardizes and reduces counterparty credit risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared, the requirement enhances their risk management practices by reducing their counterparty risk. Accordingly, for counterparties required to clear those CDS and interest rate swaps subject to this requirement, risk management will be enhanced.

In addition, from systemic perspective, required clearing reduces the complexity of unwinding/transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission continues to anticipate that they are much more likely to function in a manner that enables efficient transfer of positions than legal processes that apply to uncleared, bilateral swaps.[253]

v. Other Public Interest Considerations

In September 2009, the President and the other leaders of the ''G20'' nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[254] Together, interest rate swaps and CDS represent more than 75% of the notional amount of outstanding swaps, and therefore, requiring the most active, standardized classes of swaps within those groups to be cleared represents a significant step toward the fulfillment of that commitment.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a

[251] *See* Sections II.D and II.F.

[252] *See* Chen, K., et al., ''An Analysis of CDS Transactions: Implications for Public Reporting,'' September 2011, Federal Reserve Bank of New York Staff Reports, at 14, available at *http://www.newyorkfed.org/research/staff_reports/sr517.pdf.*

[253] As discussed in Sections II.C and II.E above, sound risk management practices are critical for all DCOs, especially those offering clearing for CDS and interest rate swaps. In the discussion above, the Commission considered whether each DCO submission under review was consistent with the core principles for DCOs. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* Sections II.D and II.F for a discussion of the effect on the mitigation of systemic risk in the CDS market and in the interest rate swaps market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[254] A list of the G20 commitments made in Pittsburgh can be found at: *http://www.g20.utoronto.ca/analysis/commitments-09-pittsburgh.html.*

significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[255] As stated in the NPRM, the clearing requirement determinations and rules proposed by the Commission will affect only eligible contract participants (ECPs) because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation; not by operation of any clearing requirement.[256] Accordingly, the Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission then invited public comment on this determination. The Commission received no comments.

The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[257] However, in its proposed rulemaking to establish a schedule to phase in compliance with certain provisions of the Dodd-Frank Act, including the clearing requirement under section 2(h)(1)(A) of the CEA, the Commission received a joint comment (Electric Associations Letter) from the Edison Electric Institute (EEI), the National Rural Electric Cooperative Association (NRECA) and the Electric Power Supply Association (EPSA) asserting that certain members of NRECA may both be ECPs under the CEA and small businesses under the RFA.[258] These members of NRECA, as the Commission understands, have been determined to be small entities by the Small Business Administration (SBA) because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [259] Although the Electric Associations Letter does not provide details on whether or how the NRECA members that have been determined to be small entities use the interest rate swaps and CDS that are the subject of this rulemaking, the Electric Associations Letter does state that the EEI, NRECA, and EPSA members ''engage in swaps to hedge commercial risk.'' [260] Because the NRECA members that have been determined to be small entities would be using swaps to hedge commercial risk, the Commission expects that they would be able to use the end-user exception from the clearing requirement and therefore would not be affected to any significant extent by this rulemaking.

Thus, because nearly all of the ECPs that may be subject to the proposed clearing requirement are not small entities, and because the few ECPs that have been determined by the SBA to be small entities are unlikely to be subject to the clearing requirement, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [261] imposes certain requirements on federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. As stated in the NPRM, § 50.3(a), would require each DCO to post on its Web site a list of all swaps that it will accept for clearing and clearly indicate which of those swaps the Commission has determined are required to be cleared, builds upon the requirements of § 39.21(c)(1), which requires each DCO to disclose publicly information concerning the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO. The Commission received no comments related to PRA. Thus, this rulemaking will not require a new collection of information from any persons or entities.

List of Subjects

17 CFR Part 39

Business and industry, Reporting requirements, Swaps.

17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons stated in the preamble, amend 17 CFR parts 39 and 50 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 7 U.S.C. 2 and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

§ 39.6 [Removed and Reserved]

■ 2. Remove and reserve § 39.6.

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 3. The authority citation to part 50 is revised to read as follows:

Authority: 7 U.S.C. 2(h) and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 4. Add subpart A, consisting of §§ 50.1 through 50.24 to read as follows:

Subpart A—Definitions and Clearing Requirement

Subpart A—Definitions and Clearing Requirement

§ 50.1 Definitions.

For the purposes of this part,

Business day means any day other than a Saturday, Sunday, or legal holiday.

Day of execution means the calendar day of the party to the swap that ends latest, provided that if a swap is:

(1) Entered into after 4:00 p.m. in the location of a party; or

(2) Entered into on a day that is not a business day in the location of a party, then such swap shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day.

§ 50.2 Treatment of swaps subject to a clearing requirement.

(a) All persons executing a swap that:

(1) Is not subject to an exception under section 2(h)(7) of the Act or § 50.50 of this part; and

[255] *See* 5 U.S.C. 601 *et seq.*

[256] To the extent that this rulemaking affects DCMs, DCOs, or FCMs, the Commission has previously determined that DCMs, DCOs, and FCMs are not small entities for purposes of the RFA. *See,* respectively and as indicated, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs and FCMs); and 66 FR 45604, 45609, Aug. 29, 2001 (DCOs).

[257] *See* 66 F.R. 20740, 20743 (Apr. 25, 2001).

[258] *See* joint letter from EEI, NRECA, and ESPA, dated Nov. 4, 2011, (Electric Associations Letter), commenting on Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011).

[259] Small Business Administration, Table of Small Business Size Standards, Nov. 5, 2010.

[260] *See* Electric Associations Letter, at 2. The letter also suggests that EEI, NRECA, and EPSA members are not financial entities. *See id.,* at note 5, and at 5 (the associations' members ''are not financial companies'').

[261] 44 U.S.C. 3507(d).

(2) Is included in a class of swaps identified in § 50.4 of this part, shall submit such swap to any eligible derivatives clearing organization that accepts such swap for clearing as soon as technologically practicable after execution, but in any event by the end of the day of execution.

(b) Each person subject to the requirements of paragraph (a) of this section shall undertake reasonable efforts to verify whether a swap is required to be cleared.

(c) For purposes of paragraph (a) of this section, persons that are not clearing members of an eligible derivatives clearing organization shall be deemed to have complied with paragraph (a) of this section upon submission of such swap to a futures commission merchant or clearing member of a derivatives clearing organization, provided that submission occurs as soon as technologically practicable after execution, but in any event by the end of the day of execution.

§ 50.3 Notice to the public.

(a) In addition to its obligations under § 39.21(c)(1), each derivatives clearing organization shall make publicly available on its Web site a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the Act and this part.

(b) The Commission shall maintain a current list of all swaps that are required to be cleared and all derivatives clearing organizations that are eligible to clear such swaps on its Web site.

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Specification	Fixed-to-floating swap class			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
Conditional Notional Amounts	No	No	No	No.
Specification	**Basis swap class**			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
Conditional Notional Amounts	No	No	No	No.
Specification	**Forward rate agreement class**			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
Optionality	No	No	No	No.
Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Specification	**Overnight index swap class**			
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP).	
Floating Rate Indexes	FedFunds	EONIA	SONIA.	
Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 2 years.	
Optionality	No	No	No.	
Dual Currencies	No	No	No.	
Conditional Notional Amounts	No	No	No.	

(b) *Credit default swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Specification	North American untranched CDS indices class
Reference Entities	Corporate.
Region	North America.
Indices	CDX.NA.IG; CDX.NA.HY.
Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y; CDX.NA.HY: 5Y.
Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
Tranched	No.

Specification	European untranched CDS indices class
Reference Entities	Corporate.
Region	Europe.
Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
Tenor	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
Tranched	No.

§ 50.5 Swaps exempt from a clearing requirement.

(a) Swaps entered into before July 21, 2010 shall be exempt from the clearing requirement under § 50.2 of this part if reported to a swap data repository pursuant to section 2(h)(5)(A) of the Act and § 46.3(a) of this chapter.

(b) Swaps entered into before the application of the clearing requirement for a particular class of swaps under §§ 50.2 and 50.4 of this part shall be exempt from the clearing requirement if reported to a swap data repository pursuant to section 2(h)(5)(B) of the Act and either § 46.3(a) or §§ 45.3 and 45.4 of this chapter, as appropriate.

§ 50.6 Delegation of Authority.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, with the consultation of the General Counsel or such other employee or employees as the General Counsel may designate from time to time, the authority:

(1) After prior notice to the Commission, to determine whether one or more swaps submitted by a derivatives clearing organization under § 39.5 falls within a class of swaps as described in § 50.4, provided that inclusion of such swaps is consistent with the Commission's clearing requirement determination for that class of swaps; and

(2) To notify all relevant derivatives clearing organizations of that determination.

(b) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 50.7–50.9 [Reserved].

§ 50.10 Prevention of evasion of the clearing requirement and abuse of an exception or exemption to the clearing requirement.

(a) It shall be unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the Act or any Commission rule or regulation promulgated thereunder.

(b) It shall be unlawful for any person to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the Act or an exception or exemption under this chapter.

(c) It shall be unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the Act, including any exemption or exception as the Commission may provide by rule, regulation, or order.

■ 5. Designate § 50.25 under new subpart B under the following heading and add reserved §§ 50.26 through 50.49.

Subpart B—Compliance Schedule

Sec.
50.25 Clearing requirement compliance schedule.
50.26–50.49 [Reserved]

■ 6. Add subpart C, consisting of § 50.50, to read as follows:

Subpart C—Exceptions and Exemptions to Clearing Requirement

§ 50.50 Exceptions to the clearing requirement.

(a) *Non-financial entities.* (1) A counterparty to a swap may elect the exception to the clearing requirement under section 2(h)(7)(A) of the Act if the counterparty:

(i) Is not a "financial entity" as defined in section 2(h)(7)(C)(i) of the Act;

(ii) Is using the swap to hedge or mitigate commercial risk as provided in paragraph (c) of this section; and

(iii) Provides, or causes to be provided, the information specified in paragraph (b) of this section to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission. A counterparty that satisfies the criteria in this paragraph (a)(1) and elects the exception is an "electing counterparty."

(2) If there is more than one electing counterparty to a swap, the information specified in paragraph (b) of this section shall be provided with respect to each of the electing counterparties.

(b) *Reporting.* (1) When a counterparty elects the exception to the clearing requirement under section 2(h)(7)(A) of the Act, one of the counterparties to the swap (the "reporting counterparty," as determined in accordance with § 45.8 of this part) shall provide, or cause to be provided, the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(i) Notice of the election of the exception;

(ii) The identity of the electing counterparty to the swap; and

(iii) The following information, unless such information has previously been provided by the electing counterparty in a current annual filing pursuant to paragraph (b)(2) of this section:

(A) Whether the electing counterparty is a "financial entity" as defined in section 2(h)(7)(C)(i) of the Act, and if the electing counterparty is a financial entity, whether it is:

(*1*) Electing the exception in accordance with section 2(h)(7)(C)(iii) or section 2(h)(7)(D) of the Act; or

(*2*) Exempt from the definition of "financial entity" as described in paragraph (d) of this section;

(B) Whether the swap or swaps for which the electing counterparty is electing the exception are used by the electing counterparty to hedge or mitigate commercial risk as provided in paragraph (c) of this section;

(C) How the electing counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable:

(*1*) A written credit support agreement;

(*2*) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(*3*) A written third-party guarantee;

(*4*) The electing counterparty's available financial resources; or

(*5*) Means other than those described in paragraphs (b)(1)(iii)(C)(*1*), (*2*), (*3*) or (*4*) of this section; and

(D) Whether the electing counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934, and if so:

(*1*) The relevant SEC Central Index Key number for that counterparty; and

(*2*) Whether an appropriate committee of that counterparty's board of directors (or equivalent body) has reviewed and approved the decision to enter into swaps that are exempt from the requirements of sections 2(h)(1) and 2(h)(8) of the Act.

(2) An entity that qualifies for an exception to the clearing requirement under this section may report the information listed in paragraph (b)(1)(iii) of this section annually in anticipation of electing the exception for one or more swaps. Any such reporting under this paragraph shall be effective for purposes of paragraph (b)(1)(iii) of this section for swaps entered into by the entity for 365 days following the date of such reporting. During such period, the entity shall amend such information as necessary to reflect any material changes to the information reported.

(3) Each reporting counterparty shall have a reasonable basis to believe that the electing counterparty meets the requirements for an exception to the clearing requirement under this section.

(c) *Hedging or mitigating commercial risk.* For purposes of section 2(h)(7)(A)(ii) of the Act and paragraph (b)(1)(iii)(B) of this section, a swap is used to hedge or mitigate commercial risk if:

(1) Such swap:

(i) Is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, where the risks arise from:

(A) The potential change in the value of assets that a person owns, produces, manufactures, processes, or merchandises or reasonably anticipates owning, producing, manufacturing, processing, or merchandising in the ordinary course of business of the enterprise;

(B) The potential change in the value of liabilities that a person has incurred or reasonably anticipates incurring in the ordinary course of business of the enterprise;

(C) The potential change in the value of services that a person provides, purchases, or reasonably anticipates providing or purchasing in the ordinary course of business of the enterprise;

(D) The potential change in the value of assets, services, inputs, products, or commodities that a person owns, produces, manufactures, processes, merchandises, leases, or sells, or reasonably anticipates owning, producing, manufacturing, processing, merchandising, leasing, or selling in the ordinary course of business of the enterprise;

(E) Any potential change in value related to any of the foregoing arising from interest, currency, or foreign exchange rate movements associated with such assets, liabilities, services, inputs, products, or commodities; or

(F) Any fluctuation in interest, currency, or foreign exchange rate exposures arising from a person's current or anticipated assets or liabilities; or

(ii) Qualifies as bona fide hedging for purposes of an exemption from position limits under the Act; or

(iii) Qualifies for hedging treatment under:

(A) Financial Accounting Standards Board Accounting Standards Codification Topic 815, Derivatives and Hedging (formerly known as Statement No. 133); or

(B) Governmental Accounting Standards Board Statement 53, Accounting and Financial Reporting for Derivative Instruments; and

(2) Such swap is:

(i) Not used for a purpose that is in the nature of speculation, investing, or trading; and

(ii) Not used to hedge or mitigate the risk of another swap or security-based swap position, unless that other position itself is used to hedge or mitigate commercial risk as defined by this rule or § 240.3a67–4 of this title.

(d) For purposes of section 2(h)(7)(A) of the Act, a person that is a ''financial entity'' solely because of section 2(h)(7)(C)(i)(VIII) shall be exempt from the definition of ''financial entity'' if such person:

(1) Is organized as a bank, as defined in section 3(a) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings association, as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a farm credit system institution chartered under the Farm Credit Act of 1971; or an insured Federal credit union or State-chartered credit union under the Federal Credit Union Act; and

(2) Has total assets of $10,000,000,000 or less on the last day of such person's most recent fiscal year.

Issued in Washington, DC, on November 29, 2012, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations: Appendices to Clearing Requirement Determination Under Section 2(h) of the CEA—Commission Voting Summary and Statement of the Chairman.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule requiring certain interest rate swaps and credit default swap (CDS) indices to be cleared, as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Central clearing is one of the three major building blocks of Dodd-Frank swaps market reform—in addition to promoting market transparency and bringing swap dealers under comprehensive oversight—and this rule completes the clearing building block.

Central clearing lowers the risk of the highly interconnected financial system. It also democratizes the market by eliminating the need for market participants to individually determine counterparty credit risk, as now clearinghouses stand between buyers and sellers.

In a cleared market, more people have access on a level playing field.

Small and medium-sized businesses, banks and asset managers can enter the market and trade anonymously and benefit from the market's greater competition.

Clearinghouses have lowered risk for the public and fostered competition in the futures markets since the late 19th century. Following the 2008 financial crisis, President Obama convened the G–20 leaders in Pittsburgh in 2009, and an international consensus formed that standardized swaps should be cleared by the end of 2012.

The CFTC has already completed a number of significant Dodd-Frank reforms laying the foundation of risk management for clearinghouses, futures commission merchants and other market participants that participate in clearing. Other reforms paving the way for this rule include straight-through processing for swaps and protections for customer funds.

This rule, which fulfills President Obama's G–20 commitment on clearing, is the last step on the path to required central clearing between financial entities. It benefited from significant domestic and international consultation. Moving forward, we will work with market participants on implementation. I would like to thank my fellow Commissioners and the CFTC staff for all of their hard work and dedication so that now clearing will be a reality in the swaps market.

For this first set of determinations, the Commission looked to swaps that are currently cleared by four derivatives clearing organizations (DCOs).

This set includes standard interest rate swaps in U.S. dollars, euros, British pounds and Japanese yen, as well as five CDS indices on North American and European corporate names.

With this rule, swap dealers and the largest hedge funds will be required to clear these swaps in March. Compliance would be phased in for other market participants through the summer of 2013.

I believe that the Commission's determination for each class satisfies the five factors provided for by Congress in the Dodd-Frank Act, including the first factor that addresses outstanding exposures, liquidity and pricing data.

Under the rule, a DCO must post on its Web site a list of all swaps it will accept for clearing and must indicate which swaps the Commission had determined are required to be cleared. In addition, the Commission will post this information on our Web site.

[FR Doc. 2012–29211 Filed 12–12–12; 8:45 am]

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